United Nations

CAT/C/SRB/1

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
29 January 2014

Original: English

Committee against Torture

Consideration of reports submitted by States parties under article 19 of the Convention

Initial periodic reports of States parties due in 1999

Serbia* ** ***

[3 May 2006]

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* The present report was previously circulated in 2007 with the symbol CAT/C/SRB/2. A corrigendum was issued with the symbol CAT/C/SRB/2/Corr.1.

** The present report, submitted as the initial report of Serbia and Montenegro was received by the Secretariat prior to the declaration of independence by Montenegro, which was adopted by the National Assembly of Montenegro on 3 June 2006, following the referendum in the Republic of Montenegro on 21 May 2006 pursuant to article 60 of the Constitutional Charter of Serbia and Montenegro. Following the declaration of independence by Montenegro, the Republic of Serbia, by letter dated 3 June 2006, notified the Secretary-General that the Republic of Serbia continued the membership of Serbia and Montenegro in the United Nations, including all organs and organizations of the United Nations system on the basis of article 60 of the Constitutional Charter of Serbia and Montenegro. Moreover, with respect to multilateral treaties deposited with the Secretary-General, the Republic of Serbia notified the Secretary General, by letter dated 30 June 2006, that all treaty actions undertaken by Serbia and Montenegro will continue in force with respect to the Republic of Serbia with effect from 3 June 2006, and that all declarations, reservations and notifications made by Serbia and Montenegro will be maintained by the Republic of Serbia until the Secretary-General is notified otherwise.

*** The initial report CAT/C/16/Add.7 was submitted by the Government of Yugoslavia for consideration by the Committee, see documents CAT/C/SR.348, 349 and 354 and *Official Records of the General Assembly, Fifty fourth Session, Supplement No. 44* (A/54/44), paras. 35–52.

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Glossary of abbreviations and acronyms

FRY	Federal Republic of Yugoslavia
RS	Republic of Serbia
SFRY	Socialist Federal Republic of Yugoslavia
S&M	State Union of Serbia and Montenegro
MUP RS	Ministry of Internal Affairs of the Republic of Serbia
SDB	Serbia State Security Service
Constitutional Charter	Constitutional Charter of the State Union of Serbia and Montenegro
Charter of Rights	Charter of Human and Minority Rights and Civil Liberties (part of Constitutional Charter above)
BCL	Basic Criminal Law (of FRY)
CL FRY	Criminal Law of FRY
CL RS	Criminal Law of the Republic of Serbia
CPC	Criminal Procedure Code of FRY (also, "The Code")

I. Introduction

1. The initial report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) for the period from 1992 to 2003 (the first six months) relates to the Federal Republic of Yugoslavia (hereinafter referred to as the FRY) and the State Union of Serbia and Montenegro (hereinafter referred to as S&M). In view of the changes that took place in the organization of S&M vis-à-vis the FRY, as well as the resultant position of the member States, it was agreed that the initial report should consist of two parts. The competent agencies of the State Union and the competent agencies of Serbia participated in the elaboration of the part related to the FRY and Serbia, while the competent agencies of Montenegro elaborated the part related to Montenegro. The part prepared by the Coordination Centre of Serbia and Montenegro and the Republic of Serbia for Kosovo and Metohija on the situation in that region is also annexed to the report and is presented in its integral version.

2. Due to the period to which the report refers, the acronym FRY will by and large be used as the name of the country. In view of the contents of the report, some constitutional and legal provisions will be cited, as may be required, several times in its various segments.

3. The FRY ceased to exist on 4 February 2003 when on the basis of the Starting Points for the Restructuring of Relations between Serbia and Montenegro of 14 March 2002, the Federal Assembly adopted the Constitutional Charter of the State Union of Serbia and Montenegro (hereinafter referred to as the Constitutional Charter – *Official Gazette of S&M*, No. 1/2003). The Charter of Human and Minority Rights and Civil Liberties (hereinafter referred to as the Charter of Human Rights) as an integral part of the Constitutional Charter was adopted by the Federal Assembly on 23 February 2003 (*Official Gazette of S&M*, No. 6/2003).

4. The creation of the State Union of Serbia and Montenegro is based on the respect for human rights of all its citizens, as emphasized in the Constitutional Charter and the Charter of Human Rights. The latter was brought precisely proceeding from the view that human and minority rights are the cornerstone of any community committed to democracy, peace, tolerance, respect for human rights, rule of law and social justice.

5. Under the Constitutional Charter, the new State, i.e. the successor State of the FRY, named Serbia and Montenegro, is based on the equality of the two member States, the State of Serbia and the State of Montenegro (arts. 1 and 2). The territory of S&M is made up of the territories of the member States; the border of S&M is inviolable; and the border between the member States is unchangeable, except by mutual consent (art. 5). The State of Serbia includes the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohija, the latter being currently under international administration in accordance with Security Council resolution 1244 (1999) (the Decision on the Proclamation of the Constitutional Charter of the State Union of Serbia and Montenegro).

6. S&M is a single personality of international law and the member States may be members of international global and regional organizations which do not set international personality as a requirement for membership (art. 14).

7. The organs of the new State are the Assembly of Serbia and Montenegro (unicameral and made up of 126 deputies, of whom 91 are from Serbia and 35 from Montenegro); the President of Serbia and Montenegro (elected to a four-year term of office), the Council of Ministers (consisting of the Minister of Foreign Affairs, the Minister of Defence, the Minister for International Economic Relations, the Minister for Internal Economic Relations and the Minister for Human and Minority Rights) and the Court of

Serbia and Montenegro (consisting of eight judges, its decisions are binding and may not be appealed; it is authorized to invalidate the laws, other regulations and acts of the institutions of S&M that are in conflict with the Constitutional Charter and the laws of S&M). Serbia and Montenegro has an Army that is under democratic and civilian control (art. 54).

8. The Constitutional Charter provides for the following aims of S&M: respect for human rights of all persons under its jurisdiction; preservation and promotion of human dignity, equality and the rule of law; joining of European structures, particularly of the European Union; harmonization of its regulations and practices with European and international standards; creation of a market economy based on free enterprise, competition and social justice; and the establishment and ensurance of the smooth operation of the common market on the territory of the State Union through coordination and harmonization of the economic systems of the member States in line with the principles and standards of the European Union (art. 3).

9. The FRY, now S&M, is situated in the south-eastern part of the European continent and occupies the central part of the Balkan Peninsula covering the area of 102,173 km^2 (Serbia 88,361 km^2, Montenegro 13,812 km^2). From a geographical point of view, S&M belongs to the group of Balkan, Central European, Mediterranean and Danubian countries.

10. The population of S&M is multi-ethnic, multi-lingual and multi-confessional. According to the data of the 2002 census, Serbia, without Kosovo and Metohija, has 7,498,001 inhabitants and Montenegro has 614,579 inhabitants (the 1991 census).

11. According to the said census, out of 7,498,001 inhabitants of Serbia, 6,212,838 declared themselves as Serbs (82.86 per cent), 293,299 as Hungarians (3.91 per cent), 136,087 as Bosniacs (1.82 per cent), 108,193 as Roma (1.44 per cent) and 80,721 as Yugoslavs (1.08 per cent). Other national and ethnic communities amount to less than 1.0 percentage point of the total number of inhabitants.

12. The largest number of inhabitants in Serbia, 6,620,699 of them, indicated Serbian as their mother tongue, followed by Hungarian as the mother tongue of 286,508 inhabitants, Bosnian of 136,749 inhabitants and Roma of 82,242 inhabitants.

13. Orthodox Christianity is the most prevalent religion in Serbia with 6,371,584 adherents, followed by Catholicism with 410,976 adherents, and Islam with 239,658 adherents, etc.

14. The majority of the countries of the Balkan region have undergone post-conflict consolidation and profound and complex internal changes, while their place, as well as the place of the entire region, in the new international constellation is in the process of being determined. In addition to military-political reasons, those changes are based on the resolve of the decision-making forces in the leading countries of the world, particularly European countries, to establish in the region a political and economic system which, compared to other historical models, proves its efficiency and vitality in those countries.

15. Some 10 years ago, the FRY (within the Socialist Federal Republic of Yugoslavia — hereinafter referred to as the SFRY — and, subsequently, as its successor) was by most important parameters closer to the Western European structures than any other country of Eastern Europe. Today, it is behind them, which is primarily the consequence of the policies pursued in the 1990s. S&M thus has a two-pronged task before it. It has to make up for the lost time and, simultaneously, to carry out necessary political and economic changes already completed in Eastern European countries, at present member States of the European Union or candidates for the membership thereof. However, those countries were not faced with State disintegration, wars and sanctions, a large number of refugees and other accompanying problems. Likewise, the situation inherited by the FRY and especially by Serbia after the October 2000 changes, in all spheres of social life, particularly in the

economy, proved to be more difficult and complex than had been anticipated. Accordingly, in order to make progress, the consequences of the political, economic, moral, and even civilizational deconstruction of society brought about by the previous Government have to be overcome. To that end, the participation and assistance of the international community in the consolidation of the situation in the country and in breaking the shackles of its isolation continue to be very important.

16. S&M is committed to fulfilling its international obligations, relating both to compliance with the General Framework Agreement for Peace in Bosnia and Herzegovina (The Dayton Peace Agreement), to which a contribution is made by the development of relations with Bosnia and Herzegovina and Croatia, and to overcoming the problems in Kosovo and Metohija. Although not satisfied with the situation of the non-Albanian population in Kosovo and Metohija, S&M is determined to cooperate constructively with international representatives and to address, together with them, the existing problems in accordance with Security Council resolution 1244 (1999).

17. S&M is ready to cooperate fully with the International Criminal Tribunal for the former Yugoslavia. Important steps have been taken to that end so far. The adoption of the Law on Cooperation between the FRY and the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law committed in the territory of the former Yugoslavia since 1991 is of particular relevance (*Official Gazette of the FRY*, Nos. 18/2002 and 16/2003). On the basis of this Law a number of persons have been handed over to the International Criminal Tribunal for the former Yugoslavia, including the former President of the FRY, Slobodan Milosevic.

18. In these circumstances and in accordance with the proclaimed goals of the State Union, the foreign policy of S&M includes the following priorities: rapprochement with the European Union and accession to the EU as the final goal; normalization of relations with neighbouring countries, primarily with the former Yugoslav Republics (this issue is of great importance for the citizens of S&M, especially for refugees); the strengthening of regional cooperation; the balancing of relations with the big Powers; and respect for, and a consistent implementation of, internationally assumed obligations, particularly under international human rights treaties.

II. Information on measures and developments relating to the implementation of the Convention

19. The Convention was adopted and opened for signature, ratification and accession by General Assembly resolution No. 39/46 of 10 December 1984. It entered into force on 26 June 1987 following the deposition of ratification or accession instruments by the required 20 States. The then SFRY signed the Convention in April 1989 and ratified it in 1991 (*Official Gazette of the SFRY* – International Treaties 9/91). The Convention entered into force for the SFRY in 1991. The SFRY deposited the instruments of ratification with the Secretary General in September 1991.

20. Upon ratification, the Assembly of the SFRY made the following declaration:

> "Yugoslavia recognizes, in compliance with article 21, paragraph 2, of the Convention, the competence of the Committee against Torture to receive and consider communications in which a State party to the Convention claims that another State party does not fulfil the obligations assumed under the Convention.
>
> "Yugoslavia recognizes, in conformity with article 22, paragraph 1, of the Convention, the competence of the Committee against Torture to receive and consider communications from or on behalf of individuals under its jurisdiction

> claiming to be victims of a violation by a State party of the provisions of the Convention."

21. Being a signatory of the Convention, the FRY, as a successor of the SFRY, submitted the initial report on the implementation of the Convention covering the period from 1991 to 1996. The Committee against Torture (hereinafter referred to as "the Committee") considered the initial report (CAT/C/16/Add.7) in November 1998 at its 348th, 349th and 354th meetings, and made appropriate conclusions and recommendations on that occasion (CAT/C/SR.348, 349 and 354).

22. In the middle of 2000, the draft second periodic report was made that referred to the period from 1997 to 2000. During the drafting of the report, which relied upon the initial report and proceeded from the same basis, the essential provisions and principles of the Convention were incorporated into, and implemented within, the Yugoslav legal system, including also the part referring to domestic affairs. Also, account was taken of the discussion, conclusions and recommendations of the Committee made during the consideration of the initial report.

23. In that context, it was specifically stated that laws and by-laws regulate in more detail the manner of conduct of domestic affairs, conditions and methods of the use of means of coercion or the exercise of other powers in performing official duties and functions. Also, measures, actions or acts that would be in contravention of the provisions of the Convention were specified.

24. The draft report also pointed out that, pursuant to the Constitution of the FRY (*Official Gazette of the FRY*, No. 1/1992) and the relevant legal acts, the organs of internal affairs should discharge the duties within their competence, and also, that they perform their duties in the manner that ensures every man and citizen equal protection and the exercise of his/her constitutionally guaranteed rights and freedoms, and protects human dignity. This excludes all forms of discrimination or use of torture under article 1 of the Convention.

25. The legality, efficiency and interests of security of citizens are the basic principles guiding the work of the organs of internal affairs. In the event of a different conduct, disciplinary and other measures, including employment termination, are taken against law enforcement personnel in the event of abusing or exceeding the powers provided by law and the Convention.

26. In the draft of the second periodic report, special reference was made to the specific situation in Kosovo and Metohija that emerged following the deployment of international forces that failed to achieve the basic goals they had proclaimed – the protection of the Serbian and other non-Albanian population. The work on the second periodic report was discontinued in October 2000.

27. Following the changes that took place in Serbia in October 2000, the FRY made a successor declaration in the United Nations on 12 March 2001 which referred also to the re accession to international legal acts in the field of human rights, including the Convention. Agreement was reached with the United Nations to the effect that, due to the specific circumstances in which the FRY had found itself in the period following the disintegration of the SFRY to October 2000, instead of periodic reports, initial reports be submitted for the period 1992–2003 (the first six months) on the implementation of the conventions on the protection of human rights. Accordingly, notwithstanding the initial report that was already submitted, this report is being submitted in the form of initial report, too, but for the period from 1992 to 2003 (i.e. the first six months of 2003).

General

28. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has essentially been implemented through the full harmonization of the legal system of the FRY, i.e. S&M, with it. Namely, considerable efforts were made since the establishment of democratic government in Serbia in October 2000 to bring the existing legal regulations in conformity with the highest international standards in the field of human rights and fundamental freedoms.

29. One third of the text of the Constitution of the FRY accounted for rights, freedoms and duties of man and the citizen and contained the complete set of human rights and fundamental freedoms harmonized with international standards. Of special importance were the provisions contained in the following articles.

Article 21, paragraph 1

Human life shall be inviolable.

Article 22

The inviolability of the physical and psychological integrity of the individual, his/her privacy and personal rights, shall be guaranteed.

Article 23, paragraph 1

Every individual shall have the right of personal freedom.

Article 25

Respect for the human personality and dignity in criminal and all other proceedings in the event of detention or restriction of freedom, as well as during the serving of a prison sentence, shall be guaranteed.

The use of force against a suspect who has been detained or whose freedom has been restricted, as well as any forcible extraction of confession or information, shall be prohibited and punishable.

No one may be subjected to torture or to degrading treatment or punishment.

Medical and other scientific experimentation may not be carried out on an individual without his/her consent.

Article 31, paragraph 1

The home shall be inviolable.

Article 32, paragraph 1

Privacy of the mail and of other means of communication shall be inviolable.

Article 33, paragraph 1

Protection of the secrecy of personal data shall be guaranteed.

Article 36, paragraph 1

Freedom of the press and other forms of public information shall be guaranteed.

Article 38, paragraph 1

Censorship of the press and of other forms of public information shall be prohibited.

Article 39

Freedom of speech and public appearance shall be guaranteed.

Article 40, paragraph 1

Citizens shall be guaranteed the freedom of assembly and other peaceful gathering, without the requirement of a permit, subject to prior notification of the authorities.

Article 41, paragraph 1

The freedom of political, trade union and other association and activities shall be guaranteed, without the requirement of a permit, subject to registration with the competent authorities.

Article 43

Freedom of religion, public or private profession of religion and performance of religious rites shall be guaranteed.

No one shall be obliged to reveal his/her religious beliefs.

Article 45

Freedom of the expression of national sentiments and culture and the use of one's mother tongue and script shall be guaranteed.

No one shall be obliged to declare his/her nationality.

30. In the context of these provisions, as well as other provisions of the Constitution of the FRY on the freedoms, rights and duties of man and the citizen, special mention is made of the above-cited article 25, paragraph 3. It reads: No one may be subjected to torture or to degrading treatment or punishment. This provision has been taken from the International Covenant on Civil and Political Rights. Identically formulated is article 26, paragraph 2, of the Constitution of the Republic of Serbia (*Official Journal of the Republic of Serbia*, No. 1/1990). Otherwise, the Constitution of the Republic of Serbia (hereinafter referred to as the RS) contains the same or similar solutions as those in the Constitution of the FRY in the entire domain of freedoms, rights and duties of man and the citizen.

31. Following the establishment of the State Union of S&M, the protection of human rights and fundamental freedoms of its citizens has been regulated by the Constitutional Charter, the Charter of Human Rights and the Law on the Court of Serbia and Montenegro. The Constitutional Charter contains only the basic provisions of the protection of human rights and freedoms, as follows.

Article 9

The member States shall regulate, ensure and protect human and minority rights and civil freedoms in their respective territory.

The attained level of human and minority rights, individual and collective and civil freedoms may not be lowered.

Serbia and Montenegro shall monitor the exercise of human and minority rights and civil freedoms and ensure their protection in the case when such protection has not been provided in the member States.

Article 13

Movement of people, goods, services and capital in Serbia and Montenegro shall be free.

Setting obstacles to the free flow of people, goods, services and capital between the State of Serbia and the State of Montenegro shall be prohibited.

32. The Charter of Human Rights, as an integral part of the Constitutional Charter, elaborates in more detail the contents and protection of human and minority rights and civil freedoms. Thus:

Article 11

Human life shall be inviolable. Capital punishment shall not exist in the State Union of Serbia and Montenegro.

The cloning of human beings shall be prohibited.

Article 12

Everyone shall be entitled to inviolability of his/her physical and mental integrity.

No one may be subjected to torture, inhuman or humiliating treatment.

No one may be subjected to medical or scientific experiments without his/her freely given consent.

Article 13

No one may be kept as a slave or in a status akin to that of a slave. Trafficking in human beings in any form shall be prohibited.

Forced labour shall be prohibited. Sexual or economic abuse of any person in a disadvantageous position shall also be regarded as forced labour.

Forced labour shall not be understood to mean any work or service lawfully required of effectively convicted persons, persons doing their military service or in case of emergency situations posing a threat to survival of the Union.

Article 14, paragraph 1

Everyone shall have the right to personal freedom and security.

Article 24

Everyone shall have the right to respect being shown for his/her private and family life, his/her home and confidentiality of his/her correspondence.

No one may enter somebody else's dwelling or other premises against the will of their holder, or search them, except on the basis of a court warrant. Somebody's dwelling or other premises may be entered and searched without a court warrant only if so is necessary for the purposes of directly arresting the perpetrator of a criminal act or for the purposes of eliminating a direct and serious threat to people and property, in the way determined by law.

The confidentiality of letters and other means of communication shall be inviolable. Deviations from this shall be permissible only for a definite period of time set by a court decision, if so is necessary for the purposes of conducting criminal proceedings or national defence purposes, in the way determined by law.

The protection of personal data shall be guaranteed. Their collection, keeping and use shall be regulated by law. The use of personal data for the purposes other than those for which they were collected shall be prohibited and punishable. Everyone shall have the right to be informed about the collected data on his/her person in accordance with the law.

Article 26

Everyone shall have the right to freedom of thought, conscience, conviction and religion; including freedom to remain committed to one's belief or religion or to change them at one's own choosing.

No one shall be obliged to declare his/her religious and other convictions.

Everyone shall be free in private and public life to express his/her religion or conviction by practising a religion, performing rites, attending services and teaching, individually or together with others.

The freedom to express one's religion or conviction may be limited by law if so is necessary for the purpose of protecting public security, health, morality and rights of other persons.

Article 29

Everyone shall have the right to freedom of opinion and expression. This right shall include freedom to seek, receive and disseminate information and ideas by speech, writing, picture or in any other way.

Everybody shall have the right of access to data in possession of State authorities in accordance with the law.

The right to freedom of expression may be restricted by law, if so is necessary towards protecting the rights and reputation of other people, preserving the authority and impartiality of courts, national security, public health or morality and public security.

Article 30

Any person may establish a newspaper or some other public media without a permit to do so. Television and radio stations may be established in conformity with the laws of the member States.

There shall be no censorship in the State Union of Serbia and Montenegro.

Any person shall have the right to a correction of any published untrue, incomplete or incorrectly transmitted information that infringes on his/her rights or interests, in conformity with the law.

Any person shall have the right to receive a reply to information published in the media, in conformity with the law.

No one may prevent news sheets from being distributed or information and ideas from being disseminated through other mass media, unless it is established by court decision that so is necessary for the purpose of curbing the advocacy of war, incitement to direct violence or racial, national or ethnic hatred that lead to discrimination, hostility and violence.

Article 31, paragraph 1

The freedom of peaceful assembly shall be guaranteed.

Article 32, paragraph 1

Everyone has the right of free association, including also the right not to be a member of some organization.

33. The Law on the Court of Serbia and Montenegro (*Official Gazette of S&M*, No. 26/2003) specifies.

Article 62

An appeal may be filed by any citizen who considers that his/her human or minority right has been violated by an individual act or action of an institution of Serbia and Montenegro or by a state organ of a member State or by an organization exercising public powers. This appeal may be filed if no other legal protection proceedings have been provided for or if no protection has been ensured in the member State.

A citizen's appeal may be filed on behalf of a person who has had his/her human or minority right violated also by another person or organ, in conformity with the law.

34. The appeals procedure has been elaborated in more detail in articles 63 to 67 of the Charter of Human Rights.

The Criminal Legislation

35. Protection against torture, i.e. degrading punishment, has been regulated primarily by the criminal legislation, both by process and material laws. The Criminal Law of the FRY (*Official Gazette of the SFRY*, No. 44/76), including subsequent amendments to it (*Official Gazette of the FRY*, Nos. 35/92, 37/93, 24/94 and 61/2001), was applied in the FRY. In addition, the Criminal Law of the Republic of Serbia and the Criminal Law of the Republic of Montenegro were also applicable in the FRY. Following the establishment of S&M, the Criminal Law of the FRY, the draft amendments to which had not been adopted for formal reasons, was renamed the Basic Penal Law (*Official Journal of the RS*, No. 39/2003) (hereinafter referred to as the BPL).

36. The matters related to criminal process law are regulated by the Criminal Procedure Code (*Official Gazette of the FRY*, No. 70/2001) (hereinafter referred to as the CPC) which entered into force on 28 March 2002 in the entire territory of the FRY. The adoption of a new Criminal Procedure Code was aimed at aligning it with the Constitution of the FRY in force at that time and with the international instruments ratified until then. Also, the intention was to incorporate new solutions that would contribute to greater efficiency of criminal proceedings and to increasing the protection of human rights and freedoms.

37. Likewise, the need to align the text of the CPC with the changed socio-economic and political conditions in the country, as well as with the terminology of the Constitution of the FRY and with the laws in force, was also taken into account. Although it did not depart substantially from the concept of the previous legislation on criminal proceedings, in terms of many solutions it adopted, the CPC was assessed as the most comprehensive undertaking in the Yugoslav criminal proceedings legislation since the adoption of the Law on Criminal Procedure in 1953.

38. In addition to the already extant basic principles (legality, establishment of truth, contradiction, transparency, immediacy, etc.), the CPC introduced a number of new principles deriving from the Constitution of the FRY, such as the principle of the protection of personal freedom and the ban of retrial. Likewise, some procedural principles were solidified and expanded, while departures were reduced, particularly in respect of the principle of the defence of the defendant. The incorporation of this principle in many concrete provisions of the CPC considerably improved the position and rights of the suspect in pretrial proceedings and the position and rights of the defendant in criminal proceedings,

as well as the rights of the defence counsel. The CPC also improved the procedural position of other participants in criminal proceedings and of the State organs involved in the suppression of crime.

39. In order to improve efficiency in the detection of criminal offences and their perpetrators, the powers of the organs of internal affairs in pretrial proceedings have been expanded. Consistent with the constitutional principle of the division of power vested in the State, the competencies of the judiciary and executive (police) authorities have been delineated clearly. The position of the State prosecutor differs substantially as he/she has been vested with the leading role in pretrial proceedings and, along with the organs of internal affairs, he/she is the most important factor in combating crime. According to former legal solutions regulating this phase of the proceedings, the greatest powers were vested in the organs of internal affairs. The CPC improved the position of the injured party and the injured party as plaintiff since it vested them with certain new rights.

40. In quest of ensuring an expeditious, rational and efficient conduct of criminal proceedings, the CPC laid down certain new solutions (the authorization of the State prosecutor not to institute, under certain conditions, criminal proceedings or to postpone their institution, the proceedings to obtain a ruling without the main hearing, etc.).

41. The new solutions adopted by the CPC were meant to ensure proper and rational regulation of pretrial, preliminary and main proceedings, as well as a full and consistent protection of the rights of the suspect and the defendant in accordance with international standards.

Torture in the Criminal Legislation

42. Although the term "torture" did not appear either in the constitutional texts or the criminal legislation of the FRY, the protection against torture, i.e. degrading treatment and punishment, was regulated by a large number of legal provisions which described and sanctioned the actions covered by the Convention. The Criminal Law of the FRY (hereinafter referred to as the CL FRY), i.e. the Basic Criminal Law, contained a number of criminal offences sanctioning torture, i.e. degrading treatment and punishment. Special mention is made of the following articles (arts. 174–199).

Article 189

A public official who, in performing a function, illegally detains, holds in detention or deprives another person of the freedom of movement in some other way shall be punished with three months to five years in prison.

If unlawful deprivation of liberty lasted longer than 30 days, or if it was carried out in a cruel way, or if the health of the person unlawfully deprived of liberty was severely impaired or if other severe consequences occurred as a result, the perpetrator shall be punished with one to eight years in prison.

If a person unlawfully deprived of liberty lost his/her life as a result of the deprivation, the perpetrator shall be punished with at least three years in prison.

Article 190

A public official who, in performing a function, uses force, threat or other impermissible means or impermissible method with intent to extract information or evidence from a defendant, a witness, a forensic expert or another person, shall be punished with three months to five years in prison.

If the extraction of information or evidence was followed by severe violence or if particularly severe consequences for the defendant occurred in the criminal proceedings as a result of the extracted statement, the perpetrator shall be punished with at least one year in prison.

Article 191

A public official who, in performing a function, abuses, insults or, in general, treats another person in a manner that is offensive to human dignity, shall be punished with three months to three years in prison.

43. In addition to the said provisions of articles 189, 190 and 191, applicable equally to military and civilian parts of society alike, the provisions of article 208 are applied exclusively to military officers.

Article 208

A military officer who, in performing the service or in connection with the service, abuses a subordinate or a younger officer or treats him in a manner that is offensive to human dignity, shall be punished with three months to three years in prison.

If the offence under paragraph 1 has been committed against a number of persons, the perpetrator shall be punished with one to five years in prison.

44. Mention is also made of the criminal offences of the misuse of official position (art. 174), unconscionable work (art. 182), violation of the inviolability of home (art. 192) and unlawful search (art. 193) that complement the protection against torture in law and in fact.

45. In its chapter 8 relating to the criminal offences against the rights and freedoms of man and the citizen, the Criminal Law of the Republic of Serbia (hereinafter referred to as the CL RS), adopted in 1977, contains 18 criminal offences (arts. 60–76), worded in the terms similar to those of the CL FRY. They include, among others, the unlawful deprivation of liberty (art. 63), abduction (art. 64), extraction of information or evidence (art. 65), mistreatment at work (art. 66), and coercion to sexual intercourse or unnatural carnal knowledge through the misuse of official position (art. 107). The criminal offences of unlawful deprivation of liberty, abduction and the extraction of information or evidence have qualified forms in the event a person suffered serious damage to his/her health or other serious consequences or if he/she lost his/her life.

46. It is recalled that, notwithstanding the identity or similarity of the wording of the said criminal offences in the CL FRY and the CL RS, the provisions of the CL FRY relate to public officials in federal organs, while the provisions of the CL RS relate to other public officials.

47. The Constitution of the FRY contained the following basic provisions related to the deprivation of liberty, detention and the right to a defence counsel.

Article 23

Every individual shall have the right of personal freedom.

No one may be deprived of liberty except in cases and according to the procedure laid down by federal law.

Every person taken into custody must be informed immediately in his/her mother tongue or in a language he/she understands of the reasons of his/her arrest and he/she shall be entitled to demand that the authorities inform his/her next of kin of his/her detention.

The detained person must promptly be informed of his/her right to remain silent.

The detained person shall be entitled to choose his/her own defence counsel.

Illegal arrests shall be a punishable offence.

Article 24

A person suspected of having committed a criminal offence may be taken into custody and detained by the order of a competent court only when it is necessary for the conduct of criminal proceedings.

The detained person must be given an explanation for his/her arrest at the time of arrest or not later than within 24 hours from the time of arrest. The detained person shall have the right of appeal, which must be decided on by the court within 48 hours.

The length of detention must be of the shortest possible duration.

The detention ordered by a first-instance court may not exceed three months from the day of arrest. This time limit may be extended for a further three more months by order of a higher court. If by the end of this period charges have not been brought, the suspect shall be released.

Article 27

No one may be punished for an act which did not constitute a penal offence under law or by-law at the time it was committed, nor may punishment be inflicted which was not envisaged for the offence in question.

Criminal offences and criminal sanctions shall be determined by statute.

Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty under a valid decision of the court.

A wrongfully convicted or unlawfully detained person shall be entitled to rehabilitation and to compensation for damages from the State and to other rights as envisaged by federal law.

Article 28

No one may be tried or punished a second time for an offence for which the proceedings against him/her had been legally suspended or the charges rejected or for which he/she had been convicted or acquitted by a court decision.

Article 29, paragraph 1

Every person shall be guaranteed the right to defend himself/herself and the right to engage a defence counsel before the court or another body authorized to conduct proceedings.

48. The Charter of Human Rights also contains provisions related to the deprivation of liberty, detention and the right to engage a defence counsel, including the following articles.

Article 14

Everyone shall have the right to personal freedom and security.

No one may be arrested by somebody's own volition. Arrest shall be permissible only in the cases and the way determined by the State Union law or laws of the member States.

No one may be arrested only because of his/her inability to perform a contractual duty.

Any arrested person shall be notified forthwith, in a language he/she understands, of the reasons for his/her arrest or indictment, as well as of his/her rights.

Any arrested person shall have the right to inform promptly a person of his/her own choosing accordingly.

Any arrested person shall have the right to instigate proceedings by which the court shall examine by emergency procedure the lawfulness of the arrest and order his/her discharge if the arrest has been found to be unlawful.

Any arrested person shall be treated humanely and with due respect for his/her personality. Any violence against an arrested person and extortion of evidence shall be prohibited in particular.

Anyone who has been arrested unlawfully shall have the right to indemnity.

Article 15

Any arrested person shall be informed promptly that he/she has the right not to make any statement and the right to have a defence counsel of his/her own choice present at his/her examination.

Any arrested person shall be brought to the competent court promptly, no longer than within 48 hours. Otherwise, he/she shall be discharged.

Any person reasonably suspected of having committed a criminal act may be detained only by decision of the competent court, if so is necessary for the purposes of conducting the criminal proceedings.

The duration of detention shall not last longer than necessary under law, which shall be seen to by the competent court.

Article 16

Everyone shall have the right to be informed as soon as possible, thoroughly and in the language he/she understands, of the nature of, and reasons for, charges being brought against him/her, and the right to a trial without prolongation.

Everybody shall have the right to defence, including the right to take a defence counsel of his/her own choosing before the court or other authority competent for conducting the proceedings, to undisturbed communication with his/her defence counsel and to have enough time and conditions for the preparation of his/her defence.

The cases in which the interests of fairness call for the accused to be given a court-assigned counsel, if he/she is unable to pay the defence counsel's fees, shall be determined in greater detail by law.

The accused shall have the right to be assisted by an interpreter if he/she does not understand or speak the language used in the proceedings.

No one who is accessible to the court or some other authority competent for the conduct of proceedings may be punished if it has not been made possible for him/her to be examined and to defend himself/herself.

No one may be forced into testifying against himself/herself or admitting his/her guilt.

Article 17

Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other State authorities and holders of public powers.

Everyone shall have the right for his/her rights and duties, as well as the accusations made against him/her, to be decided on without delay by independent, unbiased and lawfully established court.

Court decisions shall be pronounced in public and court proceedings shall be public, with the exception of cases determined by law.

Article 18

Everyone shall have the right to appeal or some other legal remedy against any decision on his/her rights, duties or legally founded interest.

Article 19

Everyone shall be presumed innocent until proven guilty of a criminal act by a court decision ready to be carried out.

Article 20

No one may be deemed guilty of, or punished for, an act that prior to being committed was not determined as punishable by law.

Punishments shall be meted out in accordance with the law in force at the time when the act was committed, unless a subsequent law is more favourable for the perpetrator.

Article 21

No one may be tried twice for one and the same punishable criminal act.

Article 22

Any person who has been sentenced unreasonably for a punishable act shall have the right to be rehabilitated and paid compensation by the State.

49. The CPC provides the following basic postulates.

Article 1

This Code shall establish the rules aimed at sentencing no innocent person and at having the perpetrator of a criminal offence imposed a criminal sanction under the conditions provided by the penal code and on the basis of legally conducted proceedings.

Prior to the pronouncement of a legally valid sentence or a decision on punishment, the accused may have his/her freedom and other rights restricted only under the conditions determined by this Code.

Article 2

The perpetrator of a criminal offence may have a criminal sanction imposed only by the competent court in the proceedings instituted and conducted under this Code.

Article 4

The accused must be advised already at the first examination of the offence he/she has been charged with and of the evidence of the indictment.

The accused must be enabled to declare himself/herself on all facts and evidence against him/her and to present all facts and evidence in his/her favour.

Article 5

Any arrested person must be informed forthwith in his/her language or in the language he/she understands of the reasons for the arrest and made aware at the same time that he/she has the right not to make any statement, and that he/she has the right to have a defence counsel of his/her own choice and to demand that his/her next of kin be advised of the arrest.

Any person arrested without a court decision must be brought to the investigative judge forthwith.

Article 12

Any violence against an arrested person or a person whose freedom has been restricted, as well as any extraction of confession or any other information from the accused or another person participating in a proceeding, shall be forbidden and punishable.

Article 13

The accused shall have the right to defend himself/herself alone or with the assistance of a defence counsel he/she chooses himself/herself from among the barristers.

The accused shall have the right to have a defence counsel be present at his/her examination.

Prior to the first examination, the accused shall be instructed that he/she has the right to hire a defence counsel and that the counsel may be present at his/her examination. He/she will be warned that all he/she may state may be used as evidence against him/her.

If the accused does not engage a defence counsel himself/herself, the court shall assign the accused a counsel when provided so by this Code.

The accused must be provided enough time and possibilities to prepare his/her defence.

The suspect shall have the right to a defence counsel in accordance with this Code.

Article 16

The accused shall have the right to be brought before the court within the shortest period of time and to be tried without prolongation.

The court shall be duty-bound to conduct the proceedings without prolongation and to prevent any abuse of the rights belonging to the persons participating in the proceedings.

The length of detention must be reduced to the shortest possible duration.

50. The CPC provides for a preliminary procedure (criminal charges and the authorizations of the organs of the preliminary procedure), a pretrial procedure (investigation and indictment), the main hearing and judgements and the procedure relating to legal remedies (regular and extraordinary legal remedies).

51. The CPC also provides for the lawful course of the entire criminal proceedings and prevents torture, i.e. degrading treatment and punishment, particularly measures with elements of torture. In this context, mention is made of the CPC provisions regulating detention (arts. 141–147) and the treatment of detainees (arts. 148–153) that meet the standards of the Convention and other international documents.

52. Under the CPC, detention may be ordered only under the conditions specified in the CPC and only if the same aim cannot be achieved by another measure (art. 141). Detention may be ordered only against certain persons (art. 142). Detention is served in all district

prisons and detention wards in penal-correctional institutions in the Republic of Serbia. Detention is ordered by the decision of the competent court. It must be served upon the person to whom it relates at the time of arrest, but no longer than within 24 hours from the time of arrest, i.e. the bringing of the said person to the investigative judge (art. 143).

53. On the basis of a decision of the investigative judge, the accused may be held in detention no longer than one month from the day of arrest. After the expiry of that period he/she may be held in detention only on the basis of a decision on the prolongation of detention, based on a decision of the trial chamber, for no longer than two months. If the proceedings are conducted for a criminal offence punishable with over five years in prison or with a more severe penalty, detention may be prolonged, by a decision of the chamber of the Supreme Court, to no longer than another three months (art. 144). A detainee is discharged from prison on the basis of a decision to cease detention and a discharge order issued by the court before which the proceedings are conducted, as well as upon expiration of the period for which detention has been ordered. The CPC provides for the possibility of rescinding detention pending presentation of the indictment with or without the consent of the investigative judge and the authorized prosecutor (art. 145).

54. Regarding the determination, rescission and duration of detention after the presentation of the indictment under a decision brought in chamber, it is provided for that, from the time of the bringing in of the indictment until the pronouncement of the first-instance judgement, detention may not last longer than two years. The period between the pronouncement of the first-instance judgement and a pronouncement of the second-instance judgement changing or confirming the first-instance judgement, may not be longer than one more year (art. 146). Furthermore, the CPC provides that the court should advise of the arrest, forthwith or within 24 hours, the family of the arrested person or the competent organs of social care if it is necessary to take care of the children and/or other dependants of the arrested person (art. 147).

55. The measure of deprivation of liberty that may be applied by an organ of internal affairs has been provided also by the provisions of the Law on Minor Offences (*Official Journal of the RS*, No. 44/89, *Official Journal of the RS*, Nos. 21/90, 65/2001).

56. Under the Law on Minor Offences, police officers and other official persons authorized to take custody of a person caught in the commission of a minor offence may detain that person without the order of the magistrate if it is not possible to establish his/her identity. The same applies if he/she has no residence or place of abode or if by leaving the country to stay abroad (for a protracted period of time), he/she may avoid the responsibility for the offence. Furthermore, taking into custody is applied if it is needed in order to prevent the continuation of the commission of the offence (art. 184). In these cases, the perpetrator of a minor offence must be taken into custody without delay. If a perpetrator of a minor offence has been caught in the commission of the offence, but cannot be brought before the magistrate at once, and if there is reasonable doubt that he/she will flee, the authorized official person of an organ of internal affairs may detain him/her for a maximum of 24 hours. The same applies if there is a danger that he/she will continue to commit the offence in a direct way.

57. An authorized organ of internal affairs may also order detention of a person caught in the commission of a minor offence under the influence of alcohol and keep him/her in custody until he/she regains sobriety, but no longer than 12 hours (art. 188).

58. The CPC provisions related to the treatment of detainees proceed from the basic assumption that the person and dignity of the detainee must not be offended, and furthermore, that only those restrictions may be applied to the detainee as are necessary to prevent his/her flight and/or instigation of third persons to the destruction of evidence or

traces of a criminal offence. It is only provided for that persons of different sex may not be put in the same room (art. 148).

59. Detainees have the right to a continuous eight-hour night rest, to a two-hour daily walk in the prison yard, to their own clothes, to use of their own bed sheets, and to books and the printed media, procurement of food, etc. However, some of these rights (use of the printed media) may be withheld on the basis of a decision of the investigative judge in precisely determined cases (art. 149).

60. Following approval by the investigative judge, detainees have the right to visits of close relatives, physicians and other persons, and diplomatic and consular representatives and to correspondence with persons outside the prison (art. 150).

61. The CPC provides for the possibility of disciplinary punishment of detainees for the breach of discipline (art. 151) and of supervising detainees by an authorized court representative (art. 152).

62. The Department for the Execution of Prison Sanctions, as an organ of administration within the Ministry of Justice of the Republic of Serbia, is responsible for the execution of prison sanctions. In its work, the Department applies the Law on the Execution of Criminal Sanctions (*Official Journal of the RS*, No. 16/97), which contains numerous provisions on the right to humane treatment during the serving of a prison sentence. The by-laws (rules), regulations and instructions of penal-correctional institutions regulate the treatment of convicted persons, their way of life and pay and, by extension, respect for the rights they are entitled to. These are the right to humane treatment, i.e. everyone must respect the dignity of the convicted persons and no one must threaten his/her physical and mental health, the right to accommodation in accordance with modern sanitary standards, etc.

63. A special chapter of the CPC deals with measures aimed at obtaining evidence. A house search is resorted to if it is probable that the accused will be caught or that traces of a criminal offence or items important for criminal proceedings will be detected. A search of a person is carried out if it is probable that traces or items important for criminal proceedings will be found (art. 77). The CPC regulates the search, ordered and expounded by court in writing; the order is served on the person whose premises are to be searched (art. 78). It also regulates the procedure of the search of a house or a person (attendance of the search by the tenant and two witnesses of legal age and the taking of the minutes following the search (arts. 79 and 80).

64. Authorized official persons of an organ of internal affairs may enter a house even without a court warrant and, if necessary, carry out a search if so requested by the tenant or if a call for help is made. Furthermore, a search may be carried out if a court warrant on the detention or arraignment of the accused and deprivation of liberty of a fugitive perpetrator caught in the commission of a criminal offence and prosecuted officially are involved. Also, if the elimination of a serious threat to the life and health of people or to property of considerable value is involved (art. 81).

65. The CPC contains provisions related to temporary confiscation of personal effects (arts. 82–86) and to treatment of suspicious effects (arts. 87 and 88).

66. The CPC provisions related to the interrogation of the accused proceed from the assumption of decent interrogation and full respect for his/her person. It is also provided for that no use of force, threat, trick, promise, extraction, exhaustion or other similar means may be resorted to in order to obtain a statement, confession or any other act that could be used as evidence against that person (arts. 89–95).

67. The CPC regulates in detail the interrogation of witnesses, the persons who are believed to be able to provide information about a criminal offence and its perpetrator. Furthermore, the CPC provides for the investigation of other important circumstances, the

obligation of the witness to respond to a summons, his/her release from the duty to testify and his/her right not to answer certain questions. The method of his/her regular summoning and fair examination is also determined (arts. 96–109).

68. The court will undertake to conduct an inspection if it assesses that, in order to establish or clarify a fact important for the proceedings, a direct observation is needed. However, the required reconstruction must not be carried out in the manner that is offensive to the public morals and order or that threatens the life and health of the people (arts. 110–112).

69. Under the CPC, forensic expertise is ordered when, for the purpose of establishing or assessing an important fact, it is necessary to obtain the findings and opinion of the persons who possess necessary professional knowledge. It is carried out on the basis of a written order of the organ conducting the proceedings and in a manner provided by the CPC (arts. 113–132).

70. Also, the CPC regulates in detail the course of the pre-indictment proceedings, i.e. the method of gathering relevant data on the possible existence of a criminal offence, bringing of criminal charges and the authorization of the organs of pre-indictment proceedings (arts. 222–240).

Chapter 2
International instruments

71. The implementation of international legal acts in the FRY was based on the Constitution of the FRY.

Article 16

The Federal Republic of Yugoslavia shall fulfil in good faith the obligations contained in international treaties to which it is a contracting party.

International treaties which have been ratified and promulgated in conformity with the present Constitution and generally accepted rules of international law shall be a constituent part of the internal legal order.

72. The laws on the ratification of international treaties were adopted by the Federal Assembly at the proposal of the Federal Government. Documents on the confirmation (ratification) of international treaties were issued by the President of the FRY. Properly ratified and published international treaties constituted an integral part of the internal legal order and, as such, could be directly enforced.

73. The Constitutional Charter contains two articles that are directly related to the direct enforcement of international treaties.

Article 10

The provisions of international treaties on human and minority rights and civil freedoms applying to the territory of Serbia and Montenegro shall be directly enforced.

Article 16

The ratified international treaties and generally accepted rules of international law shall have precedence over the law of Serbia and Montenegro and the laws of the member States.

74. Under the Constitutional Charter, the Assembly of Serbia and Montenegro enacts laws and other instruments governing the enforcement of international law and conventions laying down the obligations on cooperation of S&M and ratifies international treaties and

agreements of S&M (art. 19). The Assembly does so at the proposal of the Council of Ministers (art. 33). The laws passed by the Assembly of Serbia and Montenegro and the regulations passed by the Council of Ministers are proclaimed by the President of Serbia and Montenegro (art. 26).

75. The SFRY, i.e. the FRY as its successor, ratified a large number of international treaties, particularly in the field of human rights. In that context, special mention is made of the following international legal instruments adopted within the United Nations: the International Covenant on Civil and Political Rights; the Optional Protocol to the International Covenant on Civil and Political Rights; the Second Optional Protocol to the International Covenant on Civil and Political Rights; aiming at the abolition of the death penalty, the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Convention on the Suppression and Punishment of the Crime of Apartheid; the International Convention against Apartheid in Sports; the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention on the Rights of the Child; the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Political Rights of Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Slavery Convention; the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery; the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; the Convention relating to the Status of Stateless Persons; the Convention relating to the Status of Refugees; the Protocol relating to the Status of Refugees; the United Nations Convention against Transnational Organized Crime; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

76. By becoming a full-fledged member of the Council of Europe in April 2003, S&M assumed the obligation to accede to and ratify the basic Council of Europe documents relating to the protection of human rights. These include the European Convention for the Protection of Human Rights and Fundamental Freedoms; the Framework Convention for the Protection of National Minorities; the European Charter for Regional and Minority Languages; the European Social Charter, and specifically the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as the most important instrument for the area dealt with in this report.

77. Bearing in mind the area covered by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, it is also important to say that the FRY became a party to the European Convention on Mutual Assistance in Criminal Matters; the European Convention on Extradition: the Convention on the Transfer of Sentenced Persons; the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders; and the European Convention on the Transfer of Proceedings in Criminal Matters.

Courts in the FRY

78. The courts in the FRY protect the rights and freedoms of citizens, rights and interests of legal persons established by law and constitutionality and legality. Courts of general competence and special courts perform these functions.

79. According to the organization of the judiciary in the FRY, the proceedings for the protection of human rights and fundamental freedoms were conducted in courts of general competence, starting with municipal and district courts over to the Supreme Courts of the member Republics as the highest judicial instances. A special role in the protection of those rights and freedoms was played by the Federal Constitutional Court. The legal system of the FRY made it possible for any person to institute proceedings, i.e. to file a constitutional complaint to the Federal Constitutional Court, on account of a violation, by an individual act or action, of the rights and freedoms of man and the citizen in order to rescind an act or ban an action violating a right and a freedom guaranteed by the Constitution of the FRY.

80. The cases related to criminal offences committed against military persons and certain criminal offences committed by military persons were tried by military courts.

81. Municipal courts are first-instance courts that, in addition to being competent for civil, employment and other matters, are also competent for criminal matters. They adjudicate criminal offences punishable, as highest penalties, with fines or with imprisonment of up to 10 years unless the law provides for a district court as being competent to adjudicate these offences; adjudicate criminal offences for the adjudication of which they are made competent by a special law; conduct investigations, rule on appeals filed against decisions of investigative judges and decide on objections made to indictments for criminal offences falling within the purview of their competence; determine damage compensation claims submitted by persons who have been wrongfully sentenced or deprived of liberty; conduct proceedings and put in proposals made on requests for expunction of sentences and cessation of security measures and/or legal consequences of the sentences; and decide on these matters provided they have passed the sentences or adopted the measures.

82. Municipal courts adjudicate criminal cases in three-member chambers consisting of a judge and two jurors, except in cases of criminal offences punishable with up to one year in prison or a fine; such cases are tried by a single judge. Investigative actions are conducted by the investigative judge and only exceptionally by police, mainly on the order of the investigative judge. Appeals filed against decisions of the investigative judge are decided in the three-member chamber.

83. Usually, district courts are courts of appeal and, in special cases provided by law, courts of the first instance as well. They are courts of the first instance when they adjudicate criminal offences punishable with over 10 years in prison and criminal offences for the adjudication of which they are made competent by law. They conduct investigations, rule on appeals filed against decisions of investigative judges and decide on objections made to indictments for criminal offences falling within the purview of their competence. They decide on requests for court-decision-based expunctions of sentences and the cessation of security measures or the legal consequences of sentences related to the ban of acquisition of certain rights provided they have passed the sentences or adopted the measures. Finally, they conduct proceedings and decide on requests for extradition of sentenced and accused persons.

84. As the highest court, the Supreme Court acts, as a rule, upon legal remedies resorted to against rulings of lower courts. It is competent, inter alia, to decide on: regular legal remedies resorted to against rulings of district courts; extraordinary legal remedies resorted to against legally valid decisions when provided so by law; appeals filed in the third instance against rulings of courts of the second instance; and legal remedies resorted to against rulings brought by the Supreme Court in chamber. The Supreme Court is also competent to adjudicate in the first instance the requests for the protection of the rights and freedoms of citizens established by the Constitution of a member Republic/State if such rights and freedoms have been violated by final individual acts and no other judicial protection has been provided for.

85. Usually, court proceedings are two-instance; they are three-instance only if a court of the second instance has passed a sentence of 20 years in prison or if it has confirmed the sentence of a court of the first instance imposing the said penalty. Proceedings are three-instance also if a court of the second instance has changed the judgement of acquittal of a court of the first instance and passed its own sentence finding the defendant guilty.

86. The Federal Court of the FRY was the court of the Federal State. The competence of the Court was regulated by the Constitution of the FRY (arts. 108–110), the Law on the Federal Court and the laws on criminal proceedings (civil and criminal). Under the Constitution of the FRY, the jurisdiction of the Federal Court extended to the field of human rights and freedoms, so that it was competent to bring last-instance decisions, when provided so by federal law. It decided on extraordinary legal remedies resorted to against rulings brought in the member Republics in cases of the enforcement of the federal law and on the legality of final administrative acts adopted by federal authorities.

87. The Court of Serbia and Montenegro was established under the Constitutional Charter (arts. 46–49). It is competent to adjudicate, inter alia, appeals filed by citizens in connection with the violation, by the institutions of S&M, of the rights and freedoms guaranteed them by the Constitutional Charter if no other legal remedy has been provided for. The decisions of the Court are binding and without the right of appeal. The Court took over all pending cases and files of the Federal Constitutional Court and the Federal Court for which it is competent on the basis of the Constitutional Charter (article 12 of the Law for the implementation of the Constitutional Charter of the State Union of Serbia and Montenegro, *Official Gazette of S&M*, No. 1/2003). The work of the Court has been regulated more precisely by the Law on the Court of Serbia and Montenegro (*Official Gazette of S&M*, No. 26/2003).

Courts in the Republic of Serbia (after October 2000)

88. According to the Constitution of the Republic of Serbia:

(a) The Republic of Serbia is founded on the rule of law (art. 1);

(b) Judicial power is vested in the courts of law (art. 9);

(c) The courts of law protect the rights and freedoms of citizens, rights and interests of individuals and legal entities and provide for the observance of constitutionality and legality (art. 95);

(d) The courts of law are autonomous and independent in their work and adjudicate on the basis of the Constitution, laws and other general enactments (art. 96, para. 1);

(e) Judges have a life tenure; the grounds for the termination of a judge's tenure and/or his/her dismissal are provided by the Constitution; the existence of those grounds is established by the Supreme Court of which it informs the National Assembly and a judge may not be transferred to another post against his/her will (art. 101);

(f) The organization, establishment and jurisdiction of, and the proceedings before, the courts are stipulated by law (art. 102).

89. Following the October 2000 changes, work has been started in Serbia to devise a new judicial system that is more efficient, modern and rational. A number of laws have been adopted, drawing also upon the experience and organization of other judicial systems, particularly those in the countries of the European Union.

90. The Law on the Organization of Courts, the Law on Judges, the Law on the High Judiciary Council, the Law on Public Prosecutor's Offices, and the Law on Seats and Areas of Jurisdiction/Competence of Courts and Public Prosecutor's Offices (*Official Journal of*

the RS, No. 63/2001) were adopted at the second meeting of the regular session of the National Assembly of the Republic of Serbia in November 2001.

91. In 2002 and 2003, laws were adopted on amending the Law on the Organization of Courts, Law on Judges, Law on the High Judiciary Council, Law on Public Prosecutor's Offices, and the Law on Seats and Areas of Competence of Public Prosecutor's Offices (*Official Journal of the RS*, Nos. 42/2002, 27/2003 and 39/2003).

92. In September 2002, the Constitutional Court of the Republic of Serbia brought a decision (*Official Journal of the RS*, No. 60/2002) suspending, pending the adoption of a final decision, the execution of individual acts and actions provided by articles 7, 10, 15, 16 and 18 of the Law Amending the Law on Judges.

93. In contrast to the 1991 Law on Courts, the Law on the Organization of Courts contains precise provisions of principle regulating courts as autonomous organs of the State power. Courts are established and abolished by law and are independent from the legislative and executive branches of government. The competence of courts is established by law, which provides, inter alia, for the right of the citizen to be tried by the judge who has had the case assigned under the rules established in advance. Influence on courts is banned and the right of objection to the work of a court is defined.

94. These principled provisions define courts as organizationally and functionally independent from the executive and legislative branches of government.

95. As said before, under the 1991 Law, the courts were established as courts of general competence and as commercial courts. The judicial system determined the status of the Supreme Court of Serbia as preponderantly an appeals court and accounted for its case backlog. The Law on the Organization of Courts established courts of general competence: municipal and district courts, the Court of Appeals and the Supreme Court of Serbia and special courts, including commercial courts, the Higher Commercial Court and the Administrative Court. The Supreme Court of Serbia, Court of Appeals, Higher Commercial Court and the Administrative Court are Republic-level courts.

96. The new Law provides for the retention, by district courts, of both first-instance and appellate competencies and for the establishment of four appellate courts (in Belgrade, Kragujevac, Nis and Novi Sad), competent to adjudicate appeals of decisions of municipal and district courts. Its provisions are expected to ensure greater unification of judicial practice.

97. Court holidays are also provided by the new Law, aimed at balancing judges' work and vacation days and at discouraging people from litigation, except in urgent cases, at certain times of the year.

98. The Law on the Organization of Courts introduced important innovations with respect to the administration of courts. Thus:

(a) Courts' Rules of Procedure are laid down by the Minister in charge of judicial affairs in agreement with the President of the Supreme Court of Serbia (under the 1991 Law, the Minister of Justice set down this general act);

(b) Oversight of the implementation of courts' Rules of Procedure may be carried out only by the person who fulfils the entry requirements of the court whose work is to be overseen. The records made upon oversight are deposited both with the President of the next higher court and with the President of the Supreme Court of Serbia. Unlike the 1991 Law, the Law on the Organization of Courts provided for the duty of the President of the court which was overseen to inform the President of the next higher court, President of the Supreme Court of Serbia and the Minister in charge of judicial affairs of the measures taken to rectify the shortcomings established during oversight;

(c) A very important novelty was the keeping of a personal file for each judge, juror and court employee. The data kept on the personal files are official secrets and are collected for human resource departments' records (which did not exist until now) and contain information on the qualification, age, etc. of all employees. At the same time, they are sources of readily available, credible biographical data, which is of paramount importance for slating the best candidates at elections of judges. This was considered an important improvement, as general and professional data, under the 1991 Law, had been kept in the Ministry of Justice and were often incomplete, derived most often from curricula vitae that office seekers elected to put in themselves. Under the new Law, the Ministry in charge of the judiciary has been vested with responsibility to keep judges' personal files, the contents of which are regulated by this Law. The updating of the data contained in the personal file would be determined by the courts' Rules of Procedure as the general act of the said Ministry. The Ministry will also regulate the personal files of jurors and other court employees;

(d) Under the new Law, the Ministry in charge of the judiciary approved the Rules on courts' internal organization and job systematization, whereby the basic plank of judicial administration, epitomized by the implementation of laws and other regulations on the organization and functioning of courts, was put in place. This was very important as the study of past practices revealed that cooperation between courts and the competent Ministry had been insufficient and resulted in a number of Rules shortcomings with respect to the understanding of courts' internal organization, workplaces and the elements determining them. Accordingly, the Law introduced important novelties in the part relating to court personnel (new names of workplaces, new titles, performance review, etc.). The parameters for determining the number of court personnel are to be decided by the High Judiciary Council;

(e) The Judicial Watchdog and its regulation, in charge of the Ministry of Justice of the Republic of Serbia, was a useful and important novel institution, provided by the Law on the Organization of Courts, all the more so as, on occasions, the circumstances in which the courts worked tended to be injurious to the security of people and property.

99. Courts worked in chambers and departments; chambers tried and departments aligned chambers' positions in the same legal area. Standing chamber is determined by the annual distribution of the workload of courts done by their Presidents.

100. A total of 138 municipal, 30 district and 18 (instead of erstwhile 16) commercial courts were established by the Law on Seats and Areas of Jurisdiction/Competence of Courts and of Public Prosecutor's Offices, and their seats and areas of jurisdiction determined. Municipal courts were earmarked to act upon, and adjudicate, various types of legal matters falling within the purview of a municipal court in areas of the same district court. Thus, the First Municipal Court of Belgrade, for instance, was made responsible for international legal assistance and actions in connection with letters rogatory in the territory of the City of Belgrade. The Second Municipal Court is responsible for cadastral matters for the areas covered by the First, Second, Third and Fifth Municipal Courts; the Third Municipal Court for execution of criminal sanctions; and the Fourth Municipal Court for enforcement. Finally, the Fifth Municipal Court was made responsible for issuance of payment orders and for disputes that may ensue upon complaints against such orders.

101. Citizens' access to courts has been ensured by the provisions of the Law stipulating that a court may not refuse to provide protection in matters falling within the purview of its competence.

102. The independence of judges is also ensured by laws by way of providing certain guarantees, such as:

- Life tenure (i.e. tenure of office until retirement);

- No transfer or secondment of judges without their consent;
- Material security (pay befitting the importance of office);
- Immunity from prosecution for opinions made and votes cast in the performance of duty; no criminal prosecution without the approval of the National Assembly;
- Freedom of decision-making (decisions brought on the basis of a judge's own assessment of facts and on the basis of regulations in force);
- Impossibility of changing workload assigned (determined by yearly distribution of work);
- Random distribution of cases (judges to have cases assigned according to the schedule determined by a court's Rules of Procedure);
- Right of association;
- Right to paid professional training (type and method of training to be determined by the Supreme Court of Serbia).

103. The independence of the judicial branch of government from the executive and legislative branches is achieved by providing for the duty of everyone, in particular of the executive branch of government, to respect an enforceable judicial decision and to comply with it. Likewise, exercise of any other influence on the court is forbidden.

104. The election of judges is regulated by the Law on Judges that sets out the conditions and procedures for the election of judges and the judges' assumption of office.

105. The conditions for the election of judges include FRY citizenship, a degree from a School of Law, a completed bar examination and worthiness to serve as a judge, along with the assumption that the office seeker has met the requirements to work for government. In addition to the bar examination, a candidate is expected to have some experience in the legal profession: 2 years for a judge of the municipal court; 4 years for a judge of the commercial court; 6 years for a judge of the district court; 8 years for a judge of the appellate court, Higher Commercial Court or the Administrative Court; and 12 years for a judge of the Supreme Court of Serbia.

106. The procedure for the election of judges is initiated by the High Judiciary Council through the publication of vacant position advertisements in the *Official Journal of the Republic of Serbia* and the daily paper *Politika*. Within the 15-day application period, candidates submit applications with resumes to the High Judiciary Council. Candidates coming from courts attach, through courts, personal files (the contents of which are determined by law and the court's Rules of Procedure). The High Judiciary Council is furnished with the opinions on candidates' qualifications and qualities by candidates' employers, whereupon it puts together detailed election proposals and forwards them to the National Assembly of the Republic of Serbia, which elects judges from among the proposed candidates.

107. Prior to assuming office, judges take oaths of office before the President of the National Assembly of the Republic of Serbia, while the President of the Supreme Court takes the oath before the National Assembly.

108. A judge assumes office at a ceremonial session of all judges of the court to which he/she has been elected. The term of office of the elected judge in the previous court expires upon his/her assumption of office in the new court. A judge will be considered not elected if, for unjustified reasons, he/she fails to assume office within two months after election.

109. As the organ that proposes candidates, the High Judiciary Council consists of standing and invited members. The standing members are: the President of the Supreme Court of Serbia, the Public Prosecutor of the Republic of Serbia, the Minister of Justice, a representative of the Bar and a member elected by the National Assembly of the Republic of Serbia (a prominent lawyer who may not be a judge, a public prosecutor or a deputy public prosecutor). The invited members include six judges elected by the Supreme Court of Serbia.

110. Courts of general competence are municipal, district and appellate courts and the Supreme Court of Serbia, while special courts are commercial courts and the Higher Commercial Court.

111. The highest court in the Republic of Serbia is the Supreme Court of Serbia. Other Republic-level courts are the Higher Commercial Court and the Administrative Court, all located in Belgrade.

112. Next in the hierarchical order for appellate courts after the Higher Commercial Court and the Administrative Court is the Supreme Court of Serbia. The Higher Commercial Court is the next higher court for commercial courts, and appellate courts are the next higher courts for district and municipal courts.

113. The matter of minor offences has been regulated by the Law on Minor Offences, amended a number of times since its adoption. Thus this Law regulates:

(a) Organization and functioning of organs adjudicating minor offences;

(b) Responsibility for, and the sanctioning of, minor offences, sanctions system and the enforcement procedure. Municipal magistrates conduct first-instance proceedings.

114. Proceeding from its powers, the Government of the Republic of Serbia brought the Decision on the Establishment of Organs Adjudicating Minor Offences and the Number of Magistrates in the Organs and Chambers Adjudicating Minor Offences. Eleven such Chambers (in Belgrade, Valjevo, Zajecar, Kragujevac, Kraljevo, Leskovac, Nis, Smederevo, Uzice, and Novi Sad[1]) and 173 municipal organs adjudicating minor offences were established by this Decision.

115. Municipal organs and chambers adjudicating minor offences are autonomous state organs. They bring decisions on the basis of the Constitution, laws and other regulations and are responsible for their work to the Government of the Republic of Serbia.

116. The number of magistrates in the organs adjudicating minor offences was determined by the Decision of the Government of the Republic of Serbia at the proposal of the Minister of Justice. Municipal organs adjudicating minor offences consisting of two or more magistrates elect chief magistrates to a four-year term. The chief magistrates may be re-elected. In municipal organs adjudicating minor offences consisting of only one magistrate, that magistrate discharges the duty of chief magistrate as well. A magistrate cannot be elected to Parliament and/or local councils, hold a political or administrative office or perform any other function, work or duty that could influence his/her autonomy or independence or diminish his/her reputation or the reputation of the organ or chamber adjudicating minor offences. A magistrate may be dismissed without his/her consent.

117. The Draft Law on Minor Offences and Magistracies was entered into legislative procedure in November 2001 when a revised text of the Draft was submitted to the

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[1] Municipal organs adjudicating minor offences in Kosovska Mitrovica, Zvecan and Leposavic are active in the territory that used to be covered by the Council on Minor Offences of Pristina.

Government of the Republic of Serbia. It was submitted to the National Assembly of Serbia for adoption in April 2002.

118. The new solutions in the Draft Law on Minor Offences and Magistracies Adjudicating Minor Offences were meant to achieve harmonization with the law of the European Union. The organs adjudicating minor offences were given more appropriate names — magistracies on minor offences; a second-instance organ was introduced — the magistracy of the Republic of Serbia on minor offences as an instrument to align legal practice and penal policy on the entire territory of Serbia. Minimum and maximum fines were increased: from 200 dinars to 20,000 dinars for physical or responsible persons within legal entities, from 4,000 dinars to 400,000 dinars for legal entities and from 2,000 dinars to 200,000 dinars for entrepreneurs. Likewise, mandatory fines were to be increased from 200 dinars to 2,000 dinars for physical and responsible persons and from 200 dinars to 20,000 dinars for legal entities and entrepreneurs.

119. The parole procedure is instituted at the request of a prisoner. The request is made to the Magistracy Adjudicating Minor Offences of the Republic of Serbia through the first-instance magistracy that imposed the penalty.

120. Prior to deciding on a request, the chamber consisting of three magistrates of the Magistracy of the Republic of Serbia establishes whether the period of time necessary for release on parole provided for by law has elapsed. It also requests a report from the administration of the prison in which the prisoner serves the prison term about his/her behaviour and compliance with work obligations. In this respect, it always bears in mind his/her capacity to work and other circumstances indicating whether the purpose of punishment has been achieved, provided such a report has not been enclosed with the request made by the prisoner.

121. A proposal was made to adopt an Omnibus Law, i.e. to harmonize the provisions on minor offences in all Laws of the Republic of Serbia with the provisions of the Draft Law on Minor Offences and Magistracies Adjudicating Minor Offences, aimed at improving the relevant procedure and increasing its economy and efficiency.

Military courts

122. In addition to courts of general competence, military courts also have some level of jurisdiction in the field of the protection of human rights and freedoms. Military courts function both in time of peace and in time of war. The military is not an isolated segment of society and its activities are regulated by the rules governing the civilian part of society as well, i.e. by the principles of international law regulating the use of force. Prior to the promulgation of the Constitutional Charter, the conduct of criminal proceedings in the Army and/or the Ministry of Defence in the FRY, during which violations of the Convention were possible, was in charge of military courts. Military courts, military prosecutors and institutions for the execution of criminal sanctions, as a part of the judiciary, conducted their activities under civilian rules of the criminal procedure, the penal law and the rules regulating the execution of criminal sanctions (processual and material regulations) that were applied also by courts of general competence.

123. In times of peace and war alike, military courts and military prosecutors, three of them in S&M (Belgrade, Nis and Podgorica), as well as the Supreme Military Court and the Supreme Military Prosecutor (based in Belgrade), adjudicated under the same processual and material laws that were applied by regular courts.

124. The legal basis for the existence of military judicial organs as federal judicial institutions is contained in the Constitution of the FRY that provided for the establishment of military courts and military prosecutors by federal statute (art. 138). The Law on Military Courts (*Official Gazette of the FRY*, Nos. 11/95, 74/99 and 3/02) and the Law on

the Military Prosecutor (*Official Gazette of the FRY*, Nos. 11/95 and 3/02), providing for a detailed organization, competence and activity of military courts and the military prosecutor, were adopted on the basis of the said constitutional provision.

125. Military courts were set up and military prosecutors appointed by the President of the FRY. The prosecutors performed their functions without limitation of the term of office, were independent and autonomous and had an obligation to follow and study questions of interest for the harmonization of judicial practice and uniform law enforcement.

126. Military courts tried military persons for criminal offences, civilian persons serving in the Yugoslav Army for criminal offences committed in the performance of official duty; other civilian persons for criminal offences committed against the Yugoslav Army, enumerated in the Law on Military Courts; and prisoners of war. In contentious cases, these courts were competent to establish who could be qualified as a prisoner of war. Besides, they performed other duties provided by federal law and derived from the nature of judicial proceedings.

127. Military disciplinary tribunals attached to the General Staff of the Yugoslav Army adjudicated breaches of discipline in the first instance, while the military disciplinary tribunal attached to the General Staff of the Yugoslav Army adjudicated breaches in the second instance.

128. Maximum penalties pronounced under the Law on the Yugoslav Army for breaches of discipline amounted to 20 days in prison and the loss of the service of professional soldier and, in special cases, up to 60 days in prison (art. 165). However, persons younger than 18 at the time of the commission of the breach of discipline could not be pronounced prison penalties.

129. Under the Amnesty Law of 7 October 2000, 9,910 persons were pardoned until 31 December 2001. They were pardoned for the criminal offence of the failure to take measures to protect a military unit (arts. 214 and 215, Penal Law FRY) and the criminal offence of unlawful release from the obligation of National Service (art. 217, PL FRY). Out of the total number of pardoned persons, 2,024 were soldiers, 834 were commissioned and non commissioned officers and 7,052 were non-Yugoslav Army personnel.

130. The Constitutional Charter provided for changes in the organization of military judicial organs by having the competence of military courts, Military Prosecutors' Offices and Military Attorneys' Offices transferred to the organs of the member Republics of the State Union in accordance with the law (art. 66). Under the said Law on the Implementation of the Constitutional Charter, Military Attorneys' Offices ceased to function on the day of the entry into force of the Constitutional Charter (art. 16). The other military judicial organs continued to work pending adoption of the law provided under article 66 of the Constitutional Charter within six months following its entry into force (art. 24).

The organs of administration

131. The organs of administration include the government organs competent to address the matters covered by the Convention. Special mention is made of the organizational structure of the administration of the FRY and the former Federal Ministry of Justice that included the Sector for Human Rights as well. The Ministry was in charge of the affairs related to the exercise of the freedoms and rights of man and the citizen provided by the Constitution of the FRY, and oversaw and worked on the building and promotion of the judicial system in the field of human rights. The Ministry carried out the administrative oversight of the enforcement of federal laws and other federal regulations in the field of the exercise and protection of human rights. It also monitored the situation in the field of the freedoms and rights of man and the citizen with respect to specific categories of the population. Furthermore, it followed the implementation of adopted international acts and

documents in the field of the freedoms and rights of man and the citizen, submitted relevant reports and carried out other tasks within the purview of its work.

132. In Serbia and Montenegro, the newly-established Ministry for Human and Minority Rights took over the affairs of the Federal Ministry of Justice in the section related to the exercise and oversight of the freedoms and rights of man and the citizen guaranteed by the Constitutional Charter, international treaties and the domestic law, as well as those relating to extradition. At the same time, all laws falling within the competence of the Federal Ministry of Justice were transferred to the competence of the Ministries of Justice of the State Union member States. Under the Constitutional Charter, the Minister for Human and Minority Rights oversees the exercise of human and minority rights and coordinates with the competent organs of the member States the work on the implementation of, and respect for, international conventions related to the protection of human and minority rights.

133. The Ministry of Foreign Affairs of Serbia and Montenegro and the Ministries of Justice and Internal Affairs and other relevant organs of the State Union member States have certain competencies, within their purview of work, for the implementation of international conventions in the field of human rights and, by extension, of the Convention.

134. Parliamentary bodies — the Assembly of Serbia and Montenegro and the National Assembly of the Republic of Serbia — also have certain competencies for the implementation of conventions in the field of human rights. In the FRY, there existed a standing commission in the Federal Assembly for the oversight of the exercise and protection of the rights, freedoms and duties of man and the citizen guaranteed by the Constitution of the FRY, laws and other regulations and general acts. In addition, the commission was in charge, among others, of overseeing the compliance with the obligations that the FRY had undertaken by the signature and ratification of international documents on human rights and freedoms. Furthermore, it provided opinions and submitted proposals for a full and effective exercise and protection of the guaranteed rights and freedoms of man and the citizen.

135. The Federal Assembly of the FRY also had a standing commission on citizens' complaints and proposals. It consisted of representatives of parliamentary political parties and its main responsibility was to consider citizens' complaints, petitions, proposals and appeals and propose measures to the competent parliamentary Chamber and other competent bodies aimed at having relevant issues addressed and resolved. The National Assembly of the Republic of Serbia also has a commission on complaints and proposals.

The execution of criminal sanctions

136. The treatment of prisoners in Serbia was regulated by the provisions of the Law on the Execution of Criminal Sanctions (*Official Journal of the RS*, No. 16/97). The Law was harmonized both with the Standard Minimum Rules for the Treatment of Prisoners and with the European Prison Rules. The practice of the treatment of prisoners was predicated on the concept of re-education. In addition to the provisions of the Law on the Execution of Criminal Sanctions, the way of life and work of prisoners in penal-correctional institutions was determined in more detail by the House Rules Act adopted by the Minister of Justice.

137. The treatment of detainees has been regulated by the provisions of the CPC and the Law on the Execution of Criminal Sanctions, the basic predication of which is the prohibition of offending the person and dignity of the accused. In institutions executing criminal sanctions, the accused and convicted persons are always physically separated. Detainees are put into separate wards and, in order to protect the investigation, they are separated from accomplices and barred communication. Communication with inmates from other wards is not possible, either.

138. While in custody, a detainee is kept under the same conditions that are applied to a sentenced person. The difference in the treatment consists of the right of a detainee to have a greater number of visits than a sentenced person, as well as the right to use his/her own food, clothes, footwear and/or bed sheets. Detainees do not do prison work, but can work if they so wish. Prison work is specifically structured and there exists a special service in charge of the work.

139. Detainees stay in rooms in a group, unless isolation for a precisely determined period of time was requested in writing by the investigative judge. Groups were determined according to detainees' personal characteristics.

140. Male and female detainees are separated and intermingling is not allowed. The Minister of Justice adopts the House Rules Act on the implementation of detention measures.

141. Under the Law on the Execution of Criminal Sanctions, women are sent to penal correctional institutions for women. These institutions are separated from those for men and are organized in accordance with the needs of the women serving their sentences in them. The guards, medical staff and all other employees of those institutions in direct contact with inmates are women.

142. The treatment of juvenile delinquents has been regulated by the provisions of the CPC and the Law on the Execution of Criminal Sanctions and, compared with the treatment of adult delinquents, has its own special characteristics.

143. Treatment programmes for juvenile delinquents determine expert teams of educational correctional institutions. The inmates are placed in education groups according to age, mental maturity and other personal characteristics, as well as according to requisite treatment programmes. Juvenile detainees are separated from adult detainees.

144. Whenever possible, prison work in educational-correctional institutions for juvenile delinquents is adjusted to inmates' skills and abilities and in accordance with the possibilities existing in penal-correctional institutions. Working hours are scheduled so as to provide sufficient time for education and vocational training, as well as for sports and entertainment. Also, the Law on the Execution of Criminal Sanctions provides for assistance after release (arts. 286–288).

145. In the practice of the courts in the territory of the District Court of Belgrade, judges, public prosecutors, social workers and police representatives make two annual visits to juvenile educational institutions. Also, hearings are held to control education measures, as well as meetings with parents either in the institutions or in juvenile delinquents' places of residence, designed to begin preparations and create conditions for their reintegration upon release from the very beginning of the service of their terms. These measures are devised by an expert, the psychologist of the District Court and the First Municipal Court in Belgrade, who also oversees their implementation.

146. Male and female juvenile delinquents serve their sentences in separate institutions: the Penal-Correctional Institution for Juvenile Male Prisoners in Valjevo and the special ward for juvenile female delinquents in the Penal-Correctional Institution in Pozarevac.

147. The sending and admission to an institution, postponement and the cessation of the execution of sentences, placement into educational groups, food, visits and the right to sports activities of juvenile delinquents are regulated by the Law on the Execution of Criminal Sanctions. The same Law also regulates the assignment of prison work to them, their education, attendance of regular school and disciplinary punishment in educational-correctional institutions and the serving of sentences by juvenile delinquents.

148. Prison penalties are pronounced as exceptions and account for 2 per cent of the overall sanctions imposed upon juvenile delinquents annually. Educational-correctional institutions maintain continuous communication with the families or guardians of juvenile delinquents during their entire time in prison in order to provide for their successful re-education and social reintegration upon release from prison.

149. Upon his/her admission to prison, a prisoner is given written advice of his/her rights and duties. The text of the relevant Law and the House Rules Act are made available to him/her during his/her entire time in prison (if he/she is illiterate, he/she will have them read). Upon admission, a prisoner is first sent to a special assessment ward where he/she is assessed from the delinquency aspect as well as medically, sociologically and otherwise, for the purpose of his/her classification and the establishment of his/her re-education programme.

150. While in prison, a prisoner is accorded a treatment that ensures the respect for his/her person and dignity and the maintenance of his/her physical and mental health. He/she has the right to accommodation in accordance with established standards and modern sanitary and local climatic conditions (minimum 8 m^2 of space in the living premises in which he/she is accommodated). He/she has the right to food necessary to maintain good health and strength; free underwear, clothes and footwear adjusted to local climatic conditions; petitioning competent authorities; unrestricted correspondence; legal assistance related to the serving of his/her prison term. He/she has the right to visits by the spouse, children, adopted children, parents, adoptive parents and other relatives; time in visitation rooms for conjugal visits and visits by children; reception of packages and money orders; and work and remuneration. Furthermore, he/she enjoys free health care as well as the right to keeping a child until one year of age if a convicted woman has a child. Furthermore, he/she has the right to information/availability of daily papers, periodicals and other media; elementary and secondary education organized in penal-correctional institutions in accordance with general rules and regulations; and religious culture. His/her rights also include the right to submit complaints to the warden regarding violation of a right and/or breach of a rule, and the right to petition the director of a higher-instance institution (e.g. the Department for the Execution of Prison Sanctions) if no reply is received or if the reply is deemed unsatisfactory.

151. The security service provides security and protection both to prisoners, adult and juvenile, and prison employees. It also secures and protects the property of a penal-correctional institution, as well as the premises and work sites on which prisoners stay and work, and maintains the house order in such institutions. Security service employees wear uniforms and carry arms. The work and organization of the service, its equipment, weapons, powers and the uniform of the employed, as well as the manner of their use, are regulated by the provisions of the laws and rules regulating the functioning of this service. In addition to general requirements provided by the Law on Government Employment, job applicants are required to be of younger age, to have at least secondary education and professional training and to be psychologically and physically capable of working in the service. Prior to being employed, prospective employees are given appropriate training and take a knowledge and physical preparedness test before a multi disciplinary commission appointed by the Minister of Justice.

152. A number of training courses were organized for prison employees in 2002, including in particular the training of prison guards assisted by the United Nations Children's Fund (UNICEF) and the Organization for Security and Cooperation in Europe (OSCE) and carried out by international experts.

153. In addition to the security service that provided protection and security to inmates, of equal importance is the work of the re-education service, charged with the re-education

of inmates and their preparation for social reintegration by way of applying modern measures and methods.

154. While enjoying the aforementioned rights, the prisoners also have an obligation to observe the rules of behaviour provided by law and the House Rules Act. A prisoner may be disciplined for the breach of rules in disciplinary proceedings in which he/she is provided a possibility of defending himself/herself and to have his/her statement checked up. Disciplinary penalties are pronounced by the warden and include a reprimand, revocation of privileges and placement into solitary confinement. Prior to pronouncing the severest penalty of solitary confinement, the warden must obtain a doctor's opinion as to whether the punished person is psychologically and physically capable of enduring solitary confinement.

155. The disciplinary penalty of solitary confinement, consisting of continuous stay of a prisoner in a special room (cell), with at least a one-hour daily walk in the prison yard, does not infringe upon his/her other rights. While in solitary confinement, the prisoner receives doctor's visits every day and the penalty will be cut short upon a doctor's written statement to the effect that the continuation of the confinement is harmful to the prisoner's health.

156. The disciplinary penalty of solitary confinement may not last longer than 15 days or 30 days in the case of breach of discipline. The overall stay in solitary confinement during a calendar year may not be longer than six months. The decision on solitary confinement may be appealed.

157. The execution of the disciplinary penalties of the revocation of privileges and the placement into solitary confinement may be suspended for up to six months if it is established that the purpose of punishment may also be achieved without the execution of the penalty.

158. The disciplinary proceedings and the compensation proceedings instituted with regard to the damage caused by prisoners deliberately or by gross neglect are two-instance proceedings. The director of the Department for the Execution of Prison Sanctions decides on complaints filed by prisoners in connection with first-instance decisions brought by wardens. When and where it has been established that the purpose of disciplinary punishment had been achieved, the warden may cut short the disciplinary penalty prior to expiration.

159. There are no restrictions on communication among prisoners. Likewise, it is not possible to restrict the number of visits and the right to correspondence, or other rights provided by law. The prisoner has the right to talk alone, without the presence of the guards, with authorized officials of the Ministry of Justice of the Republic of Serbia to state his/her problems, a possibility that has been frequently made use of. The prisoner has the right to petition the competent authorities and the petitions are acted upon and serve as bases for the taking of appropriate measures if such measures are deemed necessary by the competent services.

160. In addition to these rights, well-behaved and hard-working prisoners are entitled to other privileges that may be granted by the warden. These include the expanded right to receive packages, the expanded right to receive visits, unmonitored visits in visitation rooms, time in special visitation rooms without the presence of other prisoners, and out-of-prison visits. They may also include better accommodation, off-prison outings, weekend and holiday visits to family and/or relatives, reward furloughs of up to seven days a year, and yearly out-of-prison vacations.

161. In order to ensure prisoners' and/or detainees' protection from torture or other mistreatment, the right of petition and complaint has been given them in the event of any violation of the rights granted them by law or a breach of any rule. All complaints

submitted to the warden or to the supervisory service are considered and their grounds examined urgently.[2] Likewise, any use of force is registered and the need for it assessed, whereupon a relevant report is submitted to the Ministry of Justice of the Republic of Serbia.

162. Complaints against mistreatment and torture have been rare, especially from prisoners serving long sentences. Instead, they used to request to be transferred to other prisons. Complaints have been most frequently filed for the failure to provide medical assistance as many prisoners who had had no means or opportunity to have medical examinations and interventions carried out prior to imprisonment tended to request them while in prison.

The oversight of the implementation of the execution of criminal sanctions

163. The Department for the Execution of Prison Sanctions oversaw the work of penal correctional institutions through its Oversight Section. The Director of the Department and the competent Minister oversaw the work of the Section.

164. Oversights are meant to control the implementation of rules and regulations and professional work in the execution of prison sanctions; exercise of rights by prisoners, adult and juvenile, and health care; and the use of the means of coercion and the pronouncement of disciplinary measures. Furthermore, re-education, programming and planning of education measures, the work of the re-education service, the organization of the security service, the work of various prison services, re-education achievements, and the training and assessment of prisoners are also overseen. Oversights are carried out periodically and take place without prison employees attending meetings with prisoners and detainees.

165. Oversights are very important as they enable the authorities to assess collective and individual performances within a penal-correctional institution and to take corrective measures when and where such measures are needed.

166. Oversights may be regular or random. Regular oversights are carried out in every penal correctional institution once a year, while random oversights are resorted to whenever unexpected events, such as house rules violations, fights, disorders, self-infliction of wounds, murders, mutinies and other irregular activities occur.

167. Large organized riots occurred at the end of 2000 (in the period of interregnum following the fall of the Milosevic regime) in penal-correctional institutions in Nis, Sremska Mitrovica and Pozarevac (Zabela), and on that occasion substantial material damage was caused. These were high-security prisons with prisoners serving the severest sentences. They rioted because of prison conditions and the length of sentences. In order to calm the situation in those institutions, in addition to taking the measures agreed upon in meetings with prisoners, the authorities transferred prisoners to other prisons and investigated the employees. Wardens in almost all prisons were replaced in the course of the last two years and, within the measures designed to improve prison conditions, complaints of all prisoners were considered and their legitimacy urgently examined.

168. In addition to internal oversights of the work of the institutions for the execution of prison sanctions carried out by the Department for the Execution of Prison Sanctions, Oversight Section, the International Committee of the Red Cross also had insight into concrete situations. It made 215 visits from 1999 to December 2002. Representatives of the Helsinki Committee for Human Rights, the Office of the United Nations High Commissioner for Refugees, OSCE, the Humanitarian Rights Centre, and the Committee

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[2] The consideration of the complaints has been specifically insisted upon since 2000.

against Torture visited penal-correctional institutions or individual prisoners, too. Furthermore, representatives of the Ministry for Social Affairs of the Republic of Serbia and the College of Internal Affairs (Police Academy) also visited them, as well as numerous journalists and television crews who were allowed direct insight into the situation in those institutions. Likewise, representatives of embassies were allowed direct contact with the nationals of their respective countries held in custody in Serbia either as prisoners or detainees. The competent Minister and Assistant Ministers also visit these institutions in order to acquire direct personal knowledge of their work and problems. Courts also regularly oversee the work of the institutions during visits to detainees. Surely, the number and diversity of the visits provide eloquent proof of the transparency of prison work.

169. Individual and group visits have to be approved by the Department for the Execution of Prison Sanctions, while court approval is required for meetings with prisoners.

The health care of prisoners and detainees

170. The health care of prisoners and detainees has been organized according to general health regulations. The Health Care Service is responsible for medical prevention, treatment of prisoners and detainees and for the sanitary and food and water quality control. Penal correctional institutions have their own health services and hospitals, while district prisons use the services of the medical institutions of cities and towns in which they are located. The doctors of these institutions visit the prisons twice a week or as and when necessary. Upon admission to a penal-correctional institution, all prisoners and detainees are examined and a medical record card is opened for each of them. Examinations are obligatory prior to release as well.

171. Prisoners who fall ill are treated in the Prison Hospital of the Belgrade Penal-Correctional Institution. This is also a specialized hospital within the Department for the Execution of Prison Sanctions and it provides closed-prison psychiatric treatment, obligatory alcohol and drug detoxification programmes and other specialist forms of health care of inmates.

172. The Law on the Execution of Criminal Sanctions provides for a free medical protection. If the protection/treatment is unavailable in a penal-correctional institution, prisoners are referred to the Prison Hospital or a psychiatric or some other hospital; the time spent in hospital is counted as a period of time spent in prison. Likewise, the warden may approve a specialist examination if the doctor has not approved such an examination.

The functioning of institutions for the execution of criminal sanctions

173. The perennial economic problems of the FRY, exacerbated by the effects of the United Nations sanctions and the consequences of the 1999 bombing, were drastically reflected also on the functioning of the institutions for the execution of criminal sanctions. By the same token, this was also reflected on the behaviour of prison inmates and employees. Considerable efforts were made to improve the material situation and work motivation of the employees and, by extension, to better the treatment of prisoners. Likewise, substantial funds were invested in improving prison conditions.

174. Approximately 10 million dinars were invested in adaptations and renovations of the penal-correctional institutions in the following cities and towns in Kosovo and Metohija in the reporting period: Prizren, Pec, Pristina, Kosovska Mitrovica and Istok.[3] The adaptation and renovation works were financed from the budget of the Republic of Serbia and by the

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[3] Following the renovation, the penal-correctional institution in Istok was destroyed in the 1999 bombing.

penal correctional institutions' own funds. As is known, the FRY no longer ran the penal correctional institutions in Kosovo and Metohija, and they were taken over by the United Nations Interim Administration Mission in Kosovo.

175. Adaptation and renovation works and efforts to improve prison conditions continued in the past two years of the reporting period. In view of financial strictures and the investment priority accorded the penal-correctional institutions in Sremska Mitrovica, Nis and Pozarevac (Zabela), where much destruction and burning of property took place in the 2000 rioting, the overall achievements were modest. They included the renovation and adaptation of Pavilion VII in the penal-correctional institution in Pozarevac (Zabela), and the renovation of Pavilion II and the continuation of the kitchen, bakery and laundry adaptation works in the penal-correctional institution in Nis. Preparations for the adaptation of its House of Culture continued because its library had been destroyed in the 2000 rioting. Storehouse adaptation works continued and a partial repair of the detention building in the penal-correctional institution in Sremska Mitrovica was completed. Renovation of the women's ward of the Prison Hospital of the penal-correctional institution in Belgrade to match modern European standards was completed. The outer wall of a building damaged in the 2001 flooding in the penal-correctional institution in Valjevo was built up. The renovation and adaptation of the District Court in Leskovac was completed. The renovation and adaptation of the said penal-correctional institutions were financed from the budget of the Republic of Serbia.

176. Notwithstanding all the work, not all adaptations in all penal-correctional institutions necessary for the improvement and humanization of prison conditions and security factors were completed. Some of those institutions are saddled with the practice of having as many as 80 prisoners in one room, which causes problems with establishing and maintaining order and discipline and is, at the same time, detrimental to the protection of the physical and moral integrity of prisoners. Smaller rooms with fewer prisoners would have enabled better control and would have had a positive effect on overall prison conditions. The presence of a large number of prisoners in one place presents a risk of negative, hostile and destructive behaviour.

The conduct of the police

177. Bringing transparency to the work of the Ministry of Internal Affairs of the Republic of Serbia (hereinafter referred to by its Serbian acronym MUP RS) was designed to increase the security culture of the citizens and re-establish their trust in the police. That the trust did increase was evinced also by the rising number of help requests, addressed to the MUP RS either directly or via electronic mail, or complaints against the conduct of the police, submitted without fear of negative consequences. For its part, the Minister of Internal Affairs ordered police chiefs of all organizational units of the MUP RS to verify and respond to each and every complaint, whether submitted in writing or by word of mouth, whether signed or anonymous.

178. In the period from 1 January 2000 to 31 October 2002, organizational units of the MUP RS received 4,625 submissions and complaints about police work and conduct. Of that number, 523 (11.3 per cent) were founded, on which account 158 police officers were prosecuted and pronounced disciplinary punishments for serious, and 111 for minor, breaches of duty. A total of 32 police officers were suspended pending completion of disciplinary proceedings. Altogether 10 criminal and 14 minor offence charges were brought, and four police officers had contracts terminated by agreement. It was established that 2,929 (63.3 per cent) submissions were unfounded, while 1,173 (25.36 per cent) were investigated at the time of the writing of the report.

179. In addition to these criminal charges, 32 MUP RS personnel also had disciplinary proceedings instituted against them. In four cases, the measure of dismissal was introduced,

10 officers were fined, 5 transferred to other workplaces, charges were dropped against 2, 5 officers were acquitted, while proceedings against 6 continued. All police officers who had disciplinary proceedings instituted against them were suspended pending completion of the proceedings and, as already stated above, four officers had contracts terminated by agreement.

180. Considering the purview and scope of work carried out by MUP RS personnel, the number of cases in which the official powers were exceeded and/or abused was negligible. In 2001, MUP RS personnel intervened and used their legal powers in over 3,131,000 cases, exceeding their powers and acting in an illegal and improper way in only 144 cases. This accounted for 0.004 per cent of the overall number of interventions, i.e. one case of exceeding or abuse of legal powers per 21,740 interventions. That ratio was maintained also in 2002, as MUP RS personnel exceeded or abused their powers and acted in an illegal or improper way in only 129 cases (1 case per 24,612 interventions) during 3,171,000 interventions.

The practice of military courts

181. The Military Court in Belgrade had several cases in which perpetrators of the criminal offences were tried and punished. In the reporting period, seven persons were sentenced from three to five months in prison each for the criminal offence of extraction of information or evidence under article 190 of the BCL. Two persons were sentenced to eight months in prison each for the criminal offence of mistreatment in the discharge of official duty under article 191 of BCL. Two military officers were passed suspended sentences and four were sentenced from 5 to 11 months in prison for the criminal offence of mistreatment of subordinate or younger officers under article 208 of the BCL.

The visit of a delegation of the Committee against Torture

182. A delegation of the Committee against Torture visited the FRY from 8 to 19 July 2002. Proceeding from the interest communicated before arrival, the representatives of the Committee met the representatives of the Government at the levels of the Federation and the member Republics and toured a number of competent institutions in Serbia and in Montenegro. Following the visit, the delegation of the Committee made a confidential report and forwarded it to the FRY in accordance with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The FRY/S&M replied to the report.

183. On the basis of the meetings with competent officials and the tour of relevant institutions, the delegation made a preliminary assessment that torture had been systematically practised in the FRY prior to October 2000. It went on to aver that no systematic torture had been practised from that time on, but that isolated cases, evident in every democratic country, had occurred, admittedly with a greater than usual rate of incidence. It was concluded that torture was not practised in prisons and that investigation of the cases that had occurred was not always impartial as police officers protected one another.

184. Otherwise, proceeding from the obligations assumed upon the ratification of the Convention and in accordance with articles 20 and 22 of the Convention, the FRY accepted the competence of the Committee to consider three cases of individual communications. The process of the consideration of the conclusions and recommendations of the Committee on other individual cases dating back to 1995 continued.

Information relating to articles 1–16 of the Convention

Article 1

185. In connection with the implementation of the Convention, it is recalled that, under article 10 of the Constitutional Charter, the provisions of international treaties on human and minority rights and civil liberties, applicable to the territory of S&M, are enforced directly. The ratified international treaties and generally accepted rules of international law have precedence over the law of S&M and the laws of its member States (article 16 of the Constitutional Charter). Consequently, the Convention was applied in the legal system of S&M directly.

186. Under article 12 of the Charter on Human Rights everyone is entitled to inviolability of his/her physical and psychological integrity, no one may be subjected to torture or to inhuman or degrading treatment. Furthermore, no one may be subjected to medical or scientific experiments without his/her freely given consent. Likewise, article 14 of the Charter on Human Rights guarantees respect for the human person and dignity in criminal and all other proceedings in the event of detention or restriction of freedom. It prohibits any violence against an arrested person or a person whose freedom has been restricted and the extraction of confession or information and evidence.

187. In practical terms, these provisions have been taken over from the Constitution of the FRY which, in its article 25, guaranteed respect for the human person and dignity in criminal and all other proceedings in the event of detention or restriction of freedom. The same is applicable during the serving of a sentence. Pursuant to the same article, it is prohibited and punishable to use force against a detained person or a person who had his/her freedom restricted. No one may be subjected to torture or degrading treatment or punishment. Medical and other scientific experimentation against an individual are prohibited without his/her consent.

188. Proceeding from article 1, consistent implementation of the Convention was provided in part also by the Law on the Protection at Work (*Official Journal of the RS*, Nos. 42/91, 53/93 and 42/98) and other legal regulations as they are applicable also to the work of prisoners.

189. Forced labour did not exist in the FRY/S&M as a criminal sanction. However, while serving their sentences, prisoners were assigned work available in penal-correctional institutions correspondent with their physical and intellectual capacities, professional qualifications and wishes. The purpose of the work was to make it possible for prisoners to acquire, maintain and increase their work skills and habits and their professional knowledge. Prisoners were entitled to remuneration and protection at work in accordance with general rules and regulations.

190. Prisoners were trained and worked inside or outside penal-correctional institutions. The institutions' training and employment services trained the prisoners, organized their work and carried out other assignments provided by law. Some institutions had economic units. Article 15, paragraph 3, of the Law on the Execution of Criminal Sanctions provides for the establishment, by a relevant decision of the Government of the Republic of Serbia, of an enterprise to train and employ juvenile prisoners. However, as such a decision had not been taken by the time of the writing of the report, the work of the training and employment service was regulated by the provisions of the Law on the Organization and Functioning of Economic Units of Institutions for the Execution of Criminal Sanctions, provided those provisions were not in contravention of other rules and regulations.

191. The following economic units existed in penal-correctional institutions in the following cities and towns in Serbia: "Dubrava" and "Prolece" in Sremska Mitrovica; "Novi Putevi" in the District Prison of Novi Sad; "Nadel" in the District Prison in Pancevo; "Preporod" in Pozarevac (Zabela); "Deligrad" in Nis; "Mladost" in the Educational-Correctional Institution in Krusevac; "Elan" in Sombor; and "Buducnost" in the Penal-Correctional Institution for Juvenile Male Prisoners in Valjevo. In addition to the said economic units, most penal-correctional institutions possessed arable land and engaged in agricultural production. Even though the production was aimed at ensuring self-financing, this goal remained elusive due to insufficient investment.

192. In addition to work, prisoners may frequent schools of general or vocational education and are entitled to emoluments provided by general rules and regulations for innovations and technical improvements accomplished at work while serving their sentences. Works of art and other intellectual achievements made by prisoners through their own means in their leisure time are their intellectual property.

193. Through its Work Inspection for Protection at Work, the Ministry of Labour and Employment of the Republic of Serbia, as the competent organ, oversaw the implementation of rules and regulations on protection in the workplace. The same Work Inspection for Protection at Work unit of the Ministry of Labour oversaw, by extension, protection at work of prisoners working in an economic unit of a penal-correctional institution (workshop, worksite, etc.) or at other places of work. Protection at work is provided by penal-correctional institutions.

194. The relevant provisions of the Law on the Organization and Functioning of Economic Units of Institutions for the Execution of Criminal Sanctions were fully implemented in practice. Penal-correctional institutions inform the Work Inspection for Protection at Work unit of the Ministry of Labour of injuries in the workplace sustained by prisoners. Prisoners enjoyed all the rights to safety at work provided for all other employees which implied that:

- Prisoners were assigned work at workplaces at which safety-at-work measures were applied;
- Prisoners were assigned work without harmful consequences for their health and safety;
- Only persons given appropriate instructions may have had access to danger zones;
- Prisoners may have been given work implements and installations only if those were tested beforehand in a manner and according to the procedure provided by the Law;
- Prior to being assigned work, prisoners were advised of its danger and harmfulness, as well as of safety-at-work measures applied;
- Prisoners work in a work environment in which physical and chemical threats were within permitted limits.

195. The Work Inspection for Protection at Work unit investigates work injuries sustained by prisoners and takes measures within its competence. Work inspectors carry out injury investigations according to the instructions on investigating serious, deadly and collective work injuries. The investigation procedure provides for the taking of the written statements of authorized and responsible representatives of relevant institutions, eyewitness statements and the written statements of injured persons.

196. The statements are taken in accordance with article 172 of the Law on General Administrative Procedure (*Official Gazette of the FRY*, No. 46/96). Within the investigation procedure, work inspectors comply expressly with the principle of interrogating a party, i.e. enabling a party to make a statement concerning the facts being established in

administrative proceedings, during the entire procedure, aimed at protecting his/her own rights and interests.

197. No complaints were filed and objections made with respect to investigations carried out by work inspectors in the reporting period.

Article 2

198. The legal system of the FRY/S&M substantively implemented the provision of article 2 of the Convention and the provision continues to be complied with. The provisions of the Constitution of the FRY, the Constitutional Charter and the Charter on Human Rights, as well as the conduct of the competent authorities described in this report provide a clear indication of all the taken measures aimed at protection against torture or degrading treatment and punishment.

199. Within the purview of its competence, the MUP RS functioned in the way so as to ensure every man and citizen equal protection and exercise of his/her rights and freedoms provided by the Constitutional Charter and to protect his/her human dignity. The ensurance of these rights and freedoms, as well as the protection of human dignity, excluded any form of discrimination or the use of torture and other cruel, inhuman or degrading treatment or punishment in the sense of article 1 of the Convention.

200 The evaluation of the years-long practice of the MUP RS has revealed that there was no torture, i.e. no acts with elements of torture. Rather, there were only individual cases of abuse of powers whereupon appropriate legal and by-law measures, including suspension and the termination of employment, were taken against authorized official persons.

201. In the period from 1 January 1992 to 30 June 2003, a total of 38 criminal charges were brought against 50 MUP RS personnel. The charges were brought on suspicion that these persons had committed the following offences: 26 criminal offences of professional misconduct, 7 criminal offences of unlawful deprivation of liberty, 3 criminal offences of coercion to sexual intercourse and 3 criminal offences of unnatural carnal knowledge by way of abuse of office. They were charged with the extraction of information or evidence and one criminal offence of unnatural carnal act in connection with the criminal offence of coercion to sexual intercourse or unnatural carnal knowledge by way of abuse of office.

202. Out of the 38 criminal charges brought against MUP RS personnel, 3 criminal charges were brought against 5 persons in 1992; 3 criminal charges against 4 persons in 1993; 4 criminal charges against 4 persons in 1994; 1 criminal charge against 1 person in 1995. Furthermore, 2 criminal charges were brought against 2 persons in 1996; 3 criminal charges against 8 persons in 1997 and 1998, on aggregate; and 1 criminal charge against 2 persons in 1999. In 2000, 1 criminal charge was brought against 1 person; 5 criminal charges against 6 persons in 2001; 7 criminal charges against 11 persons in 2002; and 5 criminal charges against 6 persons in the first half of 2003. Criminal charges were also brought against 41 uniformed and 9 authorized MUP RS personnel working on crime investigation.

203. It is evident from the above breakdown that the majority of charges were brought after 2000, i.e. upon the establishment of a new democratic Government in the Republic of Serbia. At that time the new MUP RS leadership embarked upon the process of MUP RS depoliticization and decriminalization, as well as the restaffing of its higher echelons and the demystification of the work of the police. At the same time, the MUP RS devoted special attention to the implementation of the principles of transparency and public scrutiny as part of the control of its work.

204. The majority of the prosecuted cases (38 criminal charges against 50 officers) referred to the wrongful use or abuse of the powers related to the use of means of coercion – physical force or the rubber baton. In 16 cases, the means of coercion were used on the official premises during interrogations concerning the circumstances of the commission of certain criminal offences, when three persons lost their lives and five sustained severe bodily injuries. Out of the total number of MUP RS personnel who had been charged, 12 were found guilty and sentenced to 80 days to 6 years in prison.

205. In addition to being brought criminal charges against, 38 MUP RS personnel had also disciplinary proceedings instituted against them. Five of them were dismissed, 11 fined, 6 transferred to other workplaces, 2 had the charges against them dropped, 8 were acquitted, while the proceedings against 6 continued. All officers who had disciplinary proceedings instituted against them were suspended pending completion of the proceedings, while four had employment contracts terminated by agreement.

206. In the period from 1 January 2000 to 30 June 2003, MUP RS organizational units received 6,421 complaints and submissions regarding the conduct and work of its personnel, 690 (10.7 per cent) of which were founded. A total of 208 officers had disciplinary proceedings instituted against them for a serious breach of duty and 149 for a minor breach of duty. Pending completion of the proceedings, 49 officers were suspended. Also, 18 criminal and 22 minor offence charges were brought and 7 officers had contracts terminated by agreement. A total of 3,950 (61.5 per cent) complaints were established to have been unfounded, while the verification of others continued.

207. In addition to the measures provided by law and taken ex officio by the MUP RS, citizens/injured parties themselves reported criminal offences directly to competent public prosecutors. On the basis of the requests made by the competent prosecutors to the MUP RS to gather necessary information, citizens/injured parties reported the committing of 1,149 criminal offences by 1,758 authorized MUP RS personnel directly to public prosecutors in the period from 1992 to the end of June 2003. The most often reported offences were professional misconduct (1,011), followed by the extraction of information or evidence (133) and unlawful deprivation of liberty (68). In the majority of cases, it was established that the reports had been unfounded and made by the citizens who had been prosecuted. Timely information was provided to competent public prosecutors of the results of the investigation of the reports and, in most cases, the results were rejected by prosecutors as constituting no basis for prosecution.

208. The provisions of the Convention are applicable to the entire territory of the Republic of Serbia, including the Autonomous Province of Kosovo and Metohija, and relate to all citizens regardless of their national, religious, political or any other belonging. All citizens enjoy equal treatment and protection in proceedings before the State organs and, by extension, before the MUP RS. The treatment and protection related also to refugees, expellees and internally displaced persons enjoying all rights and freedoms granted to other persons and are protected both by international law and national laws. The work and conduct of MUP RS personnel were based exclusively on the law and motivated by the need to protect democratic institutions of society, personal and property security of citizens and their rights and freedoms. In their work they were also guided by the need to ensure stable public peace and order and the security of the Republic of Serbia as a whole.

209. Since 10 June 1999 and the deployment of international civil and security presences, the Kosovo Force and the United Nations Interim Administration Mission in Kosovo (UNMIK), the international community has been in exclusive charge of the security situation and the exercise of all civil and political rights in Kosovo and Metohija. However, it should be pointed out that UNMIK did not include the provisions of the Convention, nor, for that matter, those of the International Covenant on Economic, Social and Cultural Rights, into its Decree relating to Human Rights. At the time of the writing of the report,

negotiations were under way with UNMIK and the Council of Europe on the possibility of UNMIK assuming the obligations deriving from the FRY being a party to relevant international treaties.

210. Prior to the deployment of international forces in Kosovo and Metohija, in the period from 1 January 1998 to 10 June 1999, MUP RS personnel discharged their tasks professionally, in compliance with the laws even though in very complex conditions due to the continuous armed activities of Albanian terrorists. Likewise, in all cases of abuse, breach of duty or a work obligation, minor offence or a criminal offence committed by MUP RS personnel, necessary measures (criminal, disciplinary, etc.) were taken against them in accordance with the appropriate regulations of the Republic of Serbia applied until 10 June 1999 also to this area as part of the territory of Serbia and the FRY.

211. In the said period, 118 criminal offences and 108 serious breaches of duty and function by MUP RS personnel were registered in Kosovo and Metohija. Also, 75 reports were made to competent public prosecutors against 188 MUP RS personnel (144 police officers, 30 reserve officers, 9 in the status of the authorized official person and 2 other members of the personnel). The charges were brought on suspicion that they had committed the following criminal offences: murder (8), manslaughter (1), grave bodily harm (2), unnatural carnal knowledge (1), illicit trade (6), larceny (4), grand larceny (31), violent conduct (4), serious cases of violent conduct and robbery (1), seizure of a motor vehicle (27), extortion (1), provocation of general danger (6), abuse of office (19), negotiating incommensurate material gain (2), etc.

212. A total of 108 disciplinary proceedings were instituted for serious breaches of duty and function. Sixteen persons lost their lives (nine Albanians and seven Serbs) in the criminal offences of murder.

213. The largest number of offences against property was committed to the detriment of persons of Albanian nationality by taking away furnishings from abandoned homes or by the seizure of movable property and monies, aimed at acquiring unlawful material gain by abuse of office during imposition of enforcement measures. Altogether 46 MUP RS personnel were detained and arrested, while 9 had their employment contracts terminated by agreement.

214. The analysis of the committed criminal offences and serious breaches of work obligation and duty has led to the conclusion that the perpetrators committed those offences in order to acquire unlawful material gain and cause damage to other persons, that they were provoked by the situation,[4] war psychosis and a bad security environment.[5]

215. Likewise, some criminal offences and serious breaches of work obligation and duty were committed under the influence of alcohol and as a consequence of organizational failures of low ranking police officers who failed to follow the orders of the MUP RS commanding officers in Kosovo and Metohija in a consistent way.

216. All the aforementioned provides evidence that legality, efficiency and the interests of the security of the Republic of Serbia and its citizens were the main principles guiding the work of MUP RS and its entire personnel. In the cases that included contrary conduct in which the powers were abused or exceeded as provided by law and the Convention, the perpetrators had imposed upon them disciplinary and other measures, including suspension

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[4] If found in certain situations, some persons are prone to commit criminal offences: the so called situational delinquents.

[5] It included anti-terrorist operations, length of stay in Kosovo and Metohija, losses and injuries, long stays away from home, lack of professionalism, etc.

and removal from MUP RS and the termination of contracts. The cases that contained the elements of criminal and minor offences were prosecuted.

217. Distinctions should be made between the cases of improper use of the powers, i.e. improper use of the means of coercion against citizens, and the cases of criminal offences that include the acts that may be subsumed under torture, since these are two different things. Improper use of the powers/means of coercion does not automatically mean that a police officer engaged in torture, i.e. that he/she mistreated or tortured a person in the process of using his/her powers. Rather than each irregularity or abuse of powers or the use of the means of coercion by police officers, a criminal offence with the characteristics of torture, in the sense of this notion as defined in international conventions, includes only severer forms incriminated by the provisions of criminal law.

218. The conditions for the use of firearms are set in article 23 of the Law on Home Affairs (*Official Journal of the RS*, Nos. 44/91, 79/91, 54/96, 25/00 and 8/01). While discharging official duties, an officer may use firearms only if by the use of other means or otherwise he/she cannot:

(a) Protect the loss of human life;

(b) Prevent the flight of a person caught in the commission of the criminal offence of an attack against the constitutional order, threat to the territorial integrity, undermining of the military power and defence capability, violence against a representative of the highest State organ, armed rebellion, terrorism, subversion, violation of territorial sovereignty, hijacking, threat to air flight security, killing, rape, grand larceny, robbery, violent conduct, serious cases of robbery and violent conduct;

(c) Prevent the flight of a person caught in the commission of criminal offences prosecuted ex officio if there are reasons to believe that he/she possesses firearms and that he/she will use them;

(d) Prevent the flight of an arrested person or a person for whom an arrest warrant has been issued because of the commission of the aforementioned criminal offences;

(e) Repulse an imminent attack on himself/herself threatening his/her life;

(f) Repulse an attack on a facility or a person he/she provides security to.

219. While using firearms, an authorized officer has the obligation not to threaten the lives of other people and the duty to preserve human life and dignity. This is specified also in the provisions of the regulation relating to the Conditions and Manner of the Use of Means of Coercion (*Official Journal of the RS*, Nos. 40/95, 48/95 and 1/97).

220. Under article 31 of the Regulations, any use of the means of coercion is reported in writing to the directly superior officer within 24 hours. The need for, and propriety of, the use of those means, including firearms, is assessed by the MUP RS officer authorized by the Minister of Internal Affairs to make the assessment. The officer proposes to the Minister which measures provided by law are to be taken in the event of unnecessary and improper use of the means of coercion. Disciplinary and other measures, including dismissal and criminal prosecution, are taken against all authorized officers who used the means of coercion unnecessarily and improperly.

221. Consequently, each case of the use of the means of coercion is examined in detail and legal proceedings are instituted in all cases in which it was established that the means of coercion had been used unnecessarily or improperly. This, by itself, amounts to the taking of additional measures and actions relevant for the establishment of the circumstances of a particular case needed for an effective conduct of the proceedings.

222. Likewise, the commanding officers in all organizational units of the MUP RS held regular meetings to analyse the legality of the work and conduct of the MUP RS personnel. This also included the cases of unnecessary or improper use of the means of coercion, and all the personnel were informed of the measures taken to curb the phenomenon.

223. In the period from 1 January 1992 to 30 June 2003, MUP RS personnel exceeded their legal powers while using firearms in the discharge of duty in 10 cases (2 in 1992, 1 in 1993, 1 in 1994, 2 in 1997, 2 in 1998, 1 in 1999 and 1 in 2000; none in 2001; none in 2002; and none in 2003). Six persons lost their lives, four were inflicted severe and one light physical injuries. Criminal charges were brought against eight officers for the commission of the criminal offence of murder (6) and the criminal offence of grave bodily harm (3). In six cases the proceedings instituted in connection with criminal charges continued, while in two cases the officers were sentenced to four years and six months and to three years in prison, respectively.

224. It transpires that the legislation in force as well as new legislation in the field of home affairs provide for strict conduct of MUP RS personnel in the discharge of duty and, in particular, with respect to the use of the means of coercion.

225. Improper use of the powers is regulated by the provisions on disciplinary responsibility of the Law on Home Affairs, while the procedure for establishing breaches of discipline and taking appropriate measures is regulated by the Decree on Disciplinary Responsibility in the MUP RS.

226. In contrast to cases of improper conduct or improper use of the means of coercion by MUP RS personnel, sanctions for any acts of MUP RS personnel in the discharge of their official duty, if such acts contain elements of torture, mistreatment or other degrading forms of punishment, are defined in the provisions of the CL RS and the CL FRY as already discussed before.

227. In all such cases, the MUP RS has an obligation to press criminal charges against a member of its personnel ex officio if there is a reasonable doubt that the elements of the said criminal offences exist in his/her actions. Parallel to the initiation of criminal proceedings against the personnel found to have abused or exceeded their powers to the extent and in the manner attributing them the characteristics of a criminal offence, MUP RS also institutes disciplinary proceedings for a serious breach of work obligations and duty.

228. In the event of the conduct of criminal proceedings against a member of MUP RS personnel, he/she is suspended pending completion of the proceedings. He/she is not reinstated if found guilty for the commission of any of the said criminal offences by the court.

229. Since the democratic changes in 2000, considerable efforts have been made in the Republic of Serbia and/or the State Union of Serbia and Montenegro in harmonizing the legal norms related to the work and conduct of the organs of internal affairs with the principles and provisions of international law. In this respect significant progress has been achieved. The same is true of the endeavour to align the same legal norms with the Convention. The harmonization and alignment are expected to contribute to a more effective exercise of the rights and freedoms of all citizens in accordance with international standards.

230. The Guidelines on Police Ethics and the Manner of Discharging Police Work aligned with the European Code of Police Ethics and, by extension, with modern international standards in this area, were adopted in April 2003. This Code of Conduct determines that police officers, in discharging their duties, should ensure the exercise of human rights and civil liberties in accordance with the Constitution, laws, the Universal Declaration of Human Rights and other international documents in the field of human

rights. Of particular importance is the inclusion of the Guidelines in the curricula of police academies and in the programme of professional training of MUP RS personnel.

231. The alignment of domestic laws in force in the field of home affairs with European police standards and the adoption of new, and the amendment of the existing, laws were continued. It is expected to make the work of the MUP RS more effective, on the one hand, and, on the other, to ensure that MUP RS personnel use their powers in accordance with the highest standards in the field of the protection of human rights and human dignity.

232. In order to create necessary conditions in which the police would increasingly focus in their work on the protection of man, human dignity and basic human rights, important organizational changes were effected in the relevant services of the MUP RS. From the viewpoint of police work control and oversight, of particular importance was the establishment and functioning of the General Inspector of the Public Security Service of the Republic of Serbia.

233. The Constitution of the FRY provided for the possibility of recourse to extraordinary powers by the organs of internal affairs in exceptional, clearly defined situations. Under article 78 of the Constitution, the Federal Assembly was authorized to declare a state of war, a state of imminent threat of war and a state of emergency. During the state of war, state of imminent threat of war and the state of emergency, the organs of internal affairs act on the basis of the powers deriving from the regulations adopted at the time, and on the basis of the general acts remaining in force at that time. The proper use of extraordinary powers during that period was controlled through the same mechanisms existing also in time of peace as neither the Constitution nor the laws regulated that question in a specific way.

234. Under article 99 of the Constitution of the FRY, the Federal Government proclaims an imminent threat of war or a state of war or emergency when the Federal Assembly is not able to convene. It does so subject to the opinion of the President of the Republic and presidents of the Federal Assembly chambers.

235. Under the same article of the Constitution of the FRY, acts adopted during a state of war may, throughout the duration of the state of war, restrict certain rights and freedoms of man and the citizen, except those listed in article 20 (equality before the law); article 22 (inviolability of the physical and psychological integrity of the individual and his/her privacy and personal rights and the guarantee of personal dignity and security); article 25 (respect for the human person and dignity in criminal and all other proceedings, punishment of the use of force against, and the extraction of confession and information or evidence from, a person who has been detained or whose freedom has been restricted, and the prohibition of torture or degrading treatment or punishment); article 26 (the right of appeal or resort to other legal remedies); article 27 (protection from punishment for an act which did not constitute a penal offence under the law or by-law at the time it was committed and the right of rehabilitation and compensation for damages); article 28 (no trial or punishment a second time for an offence for which the proceedings against him/her had been legally suspended or the charges rejected or for which he/she has been convicted or acquitted by a court decision); article 29 (the right to defend himself/herself and to engage a counsel); article 35 (freedom of confession, conscience, thought and public expression of opinion); and article 43 (freedom of religion, public or private profession of religion and performance of religious rites).

236. The Constitution of the Republic of Serbia (art. 83) contains a similar provision according to which the enactments promulgated during a state of war may restrict some rights and freedoms of man and the citizen. They may also alter the organization, composition and powers of the Government and the Ministries, courts of law and public prosecutors' offices. Such enactments are passed by the President of the Republic, which

ensures uniformity in the regulation of the restrictions of basic rights and fundamental freedoms. When passing the enactments, the President is obliged to submit them to the National Assembly of the Republic of Serbia for approval as soon as it is in a position to meet.

237. A state of war was proclaimed in the FRY on 24 March and revoked on 10 June 1999. The enactments (ordinances) promulgated by the Federal Government under the conditions established by the Constitution of the FRY regulated, inter alia, the question of the implementation of the Law on Travel Documents of Yugoslav Citizens during a State of War and the Law on the Transport of Dangerous Substances during a State of War, the matter falling within the realm of home affairs. The Federal Government also adopted the Ordinance on the Implementation of the Law on Criminal Procedure applied, in the part related to the pretrial procedure, also by the organs of internal affairs.

238. In accordance with the state of war proclaimed in 1999, the President of the Republic promulgated the following ordinances related to the competencies of the organs of internal affairs: the Ordinance on Home Affairs during a State of War, the Ordinance on the Assembly of Citizens during a State of War, the Ordinance on the Residence or Place of Abode of Citizens during a State of War and the Ordinance on the Identity Card during a State of War. These Ordinances restricted or regulated in a different way certain rights and freedoms: the freedom of movement and settlement, the right of privacy and the freedom of public assembly. These measures were necessary to prevent possible emergence of chaos at the time when the organs of internal affairs could not carry out their regular activities normally.

239. Under the Charter on Human Rights (arts. 5 and 6), the guaranteed human and minority rights may be restricted only on the basis of the Constitutional Charter and only to the extent that is necessary to fulfil in an open and free democratic society the purpose for which the restriction is permitted. Thus the Charter practically incorporates article 4 of the International Covenant on Civil and Political Rights that defines the conditions under which it is possible to abrogate temporarily the obligations under the Covenant without the abrogation resulting in any discrimination exclusively on the ground of race, colour, sex, language, religion or social status.

240. Proceeding from the assumption that the security of the Republic of Serbia and the rights and freedoms of man and the citizens, as well as the functioning of the State organs, had been threatened by the assassination of Dr. Zoran Djindjic, the Prime Minister of Serbia, and with the aim of finding and apprehending the perpetrator(s), the Acting President of the Republic of Serbia, following a detailed proposal of the Government of the Republic of Serbia and on the basis of the powers derived from the Constitution of the Republic of Serbia (art. 83), adopted the Decision on the Proclamation of a State of Emergency on 12 March 2003. At the proposal of the Government of the Republic of Serbia and on the basis of the Constitution and the Law on Measures to Be Taken in the Event of a State of Emergency, the Acting President of the Republic of Serbia brought the Decree on Special Measures to Be Applied during a State of Emergency on the same day.

241. The Decree restricted certain rights and freedoms of man and the citizen, guaranteed by the Constitution of the Republic of Serbia, and established special competences of the State organs during the state of emergency. Special powers were conferred upon the MUP RS to protect the security and citizens of the Republic of Serbia.

242. However, the special powers conferred upon security services in specific situations, such as a threat or state of war or a state of emergency, neither imply nor justify possible use of torture or any other form of cruel, degrading or inhuman treatment by authorized personnel of MUP RS in the discharge of security duties. It is precisely for these reasons that, as has already been said, the mechanisms established to control the conduct of MUP

RS personnel in the performance of their official duties are applied even more strictly in these situations.

243. In addition, the work and conduct of MUP RS personnel during the state of emergency was exposed to daily public scrutiny and, more often than not, to parliamentary, i.e. State, control by way of the submission of reports on their work to the Defence and Security Committee of the National Assembly of the Republic of Serbia.

244. During the state of emergency, the MUP RS and the Government of the Republic of Serbia gave regular daily public briefings about their activities and measures taken to clarify the assassination of the Prime Minister and to combat organized crime. To that end, permanent and close cooperation was established between the information services of MUP RS and the Government of the Republic of Serbia. The Minister of Internal Affairs and his closest associates in charge of the operation to capture the perpetrators and their accomplices and fight organized crime held daily press conferences in the MUP RS. All public statements made by the MUP RS and the Government of the Republic of Serbia, as well as the transcripts of the press conferences, were recorded and made available to the public at the MUP RS website. The provision of regular information to the public confirmed the firm resolve and commitment of the MUP RS to making its work public and transparent, as well as demystified in the true sense of the word.

245. In addition to the regular briefing of the public through public statements and press conferences, the regular briefing of the competent State organs and the National Assembly of the Republic of Serbia was also continued. On two occasions during the state of emergency, the Defence and Security Committee of the National Assembly of the Republic of Serbia were submitted detailed information of measures taken and results achieved in the effort to find and apprehend the Prime Minister's assassins and suppress organized crime. On 8 April 2003, the same information was communicated to the Security Committee of the Assembly of the Autonomous Province of Vojvodina. On 24 April 2003, right after the revocation of the state of emergency, another meeting of the Defence and Security Committee of the National Assembly of the Republic of Serbia was held at which the final results were presented of the sweeping operation that MUP RS had undertaken during the state of emergency.

246. The imposition of the state of emergency in the Republic of Serbia and the action of the security forces that followed it in the struggle against organized crime were met with international support and approval. The international community and its officials expressed satisfaction over the results achieved by the Republic of Serbia in the struggle against organized crime during the state of emergency. They also emphasized their satisfaction over the success of the Government, which did not abuse the measures introduced during the state of emergency in the prosecution of organized crime, and over the fact that State institutions had maintained stability and functioned unperturbed also during the state of emergency.

247. After the revocation of the state of emergency, the Office of the United Nations High Commissioner for Human Rights was the first institution to congratulate the Government of the Republic of Serbia for the efforts it had invested in the struggle against the threat that organized crime presented to democratic reforms. The Office of the High Commissioner concurred with the Government in the view that some extraordinary measures taken during the state of emergency had been necessary in order to combat the threat effectively.

248. Under article 22 of the Law on Employment in State Organs (*Official Journal of the RS*, Nos. 48/91, 66/91, 44/98, 49/99, 34/01 and 39/02), an employee and/or an appointee, in a State organ is duty-bound to carry out the orders of the official in charge of the State organ, i.e. of his/her immediate superior if they are within the bounds of the law. When an

employee, i.e. an appointee, considers that the order of the official in charge of a State organ, i.e. of his/her immediate superior, is unlawful, he/she is duty-bound to draw his/her attention to that fact. In such cases, the employee, i.e. the appointee, may halt the execution of the order, except if an emergency is involved.

249. An employee, i.e. an appointee, must carry out an order repeated in writing without delay, provided the execution of the order does not constitute a criminal offence of which he/she will inform the immediately superior organ, i.e. the organ which controls or oversees the work of the State organ for which the employee, i.e. the appointee, works.

250. If an employee, i.e. an appointee, fails to warn the official, i.e. his/her immediate superior, of the unlawfulness of the order and carries it out regardless, he/she will be held responsible for its execution.

251. A similar provision is contained in the Law on Home Affairs (art. 33) which provides for the duty of the MUP RS personnel to carry out all orders of the Minister or another superior, issued for the purpose of carrying out assignments, except those ordering the execution of an act that constitutes a criminal offence.

252. Under the Law on Home Affairs, the issuance of an order, the execution of which would constitute a criminal offence, is considered a serious breach of work obligations and/or duty that may entail the measure of dismissal.

253. Under the Guidelines on Police Ethics, a subordinate is duty-bound to comply with the orders and instructions of his/her superior, to carry them out loyally and to be held responsible for their execution and its consequences, except in cases of the issuance of orders, the execution of which would constitute a criminal offence.

Article 3

254. The Constitution of the FRY, the Charter on Human Rights and relevant legal regulations contained and still contain the provisions related to the deportation and extradition of Yugoslav and foreign citizens. Thus the Constitution of the FRY provides for the following rights:

Article 17, paragraph 3

A Yugoslav citizen may not be deprived of his/her citizenship, deported from the country or extradited to another State.

Article 66

Aliens in the Federal Republic of Yugoslavia shall enjoy the freedoms and the rights and duties laid down in the Constitution, federal law and international treaties.

An alien may be extradited to another State only in cases provided for under international treaties which are binding on the Federal Republic of Yugoslavia.

The right of asylum shall be guaranteed to foreign citizens and stateless persons who are being persecuted for their advocacy of democratic views for participation in movements for social or national liberation, for the freedom and rights of the human person or for scientific or artistic freedom.

255. The Charter on Human and Minority Rights and Civil Liberties provides for the following rights.

Article 35, paragraph 2

A citizen of the State Union of Serbia and Montenegro may not be deprived of citizenship, expelled from the State Union of Serbia and Montenegro or extradited outside its territory save in accordance with international obligations of the member States.

Article 37, paragraphs 3 and 4

Entry of aliens into the territory of Serbia and Montenegro and their stay therein shall be regulated by law. An alien may be expelled from the territory of Serbia and Montenegro only on the basis of the decision of the competent authorities and by the procedure provided by law.

The expelled person may not be sent to a place where he may be persecuted because of his/her race, religion, citizenship, affiliation to a certain social group or political conviction or where his/her rights guaranteed under this Charter might be seriously violated.

Article 38

Any alien who reasonably fears that he/she might be persecuted because of his/her race, colour, sex, language, religion, ethnic affiliation, membership of a group or political conviction, shall have the right of asylum in Serbia and Montenegro. The asylum granting procedure shall be determined by law.

Any person who has been forcibly displaced in the territory of Serbia and Montenegro shall have the right to an effective protection and assistance in accordance with laws and international obligations of Serbia and Montenegro.

256. The CL FRY (BCL) also contains provisions on the expulsion of foreigners.

Article 70, paragraphs 1 and 2

The court may impose an alien expulsion from the territory of the Federal Republic of Yugoslavia banning his/her re-entry from 1 to 10 years, or for good.

In assessing whether to impose the measure referred to in paragraph 1 of this article, the court shall consider the motives behind the commission of a criminal offence, the manner of the commission of a criminal offence and other circumstances that point to the undesirability of an alien's further stay in the Federal Republic of Yugoslavia.

257. According to available data, the number of requests submitted by the FRY/S&M to other States for the extradition of its citizens amounted to between 50 and 80 per year, while the number of requests received by the FRY/S&M from other States for the extradition of their citizens amounted to between 20 and 30 per year. The number of received requests is in the ascendant.

Article 4

258. Although the criminal legislation of the FRY does not recognize torture as a criminal-legal qualification, the actions subsumable under this notion are incriminated by the provisions of the CL FRY and the CL RS.

259. The CL FRY (BCL) contained a number of criminal offences sanctioning torture, i.e. degrading treatment and punishment, in particular unlawful arrest (art. 189), extraction of information or evidence (art. 190) and mistreatment in the performance of duty (art. 191).

260. Furthermore, the aforementioned chapter 8 of the CL RS contains 18 criminal offences (arts. 60–76) similar in wording with the said articles of the CL FRY (BCL), including unlawful arrest (art. 63), extraction of information or evidence (art. 65) and mistreatment in the performance of duty, which also have their qualified forms in the event a person suffers serious impairment of his/her health or other serious consequences or if he/she loses his/her life. As well, the CL RS incriminates coercion to sexual intercourse or unnatural carnal knowledge through the abuse of official position (art. 107).

261. The CPC contains a provision of principle which prohibits and makes punishable any violence against a person deprived of liberty or a person whose liberty has been restricted, as well as any extraction of confession or any other statement from the accused or any other person, which is in accordance with international instruments regulating protection of human rights (art. 12). Such provision was contained also in article 10 of the preceding Law on Criminal Procedure.

262. Under the CPC, no force, threat, trick, promise, extraction, exhaustion, medical intervention and hallucinogenic or other similar drugs must be used against an accused person in an attempt to obtain his/her statement or confession or to make him/her commit an act which could be used against him/her in evidence (art. 131).

263. Along with the preceding Law on Criminal Procedure, the CPC provides for strict conditions for the implementation of measures of arrest and detention. Principled provisions related to arrest, detention and the right to a defence counsel were contained in the Constitution of the FRY (arts. 24, 25 and 29) and are contained in the Constitution of the Republic of Serbia (arts. 16, 24 and 26).

264. The Law on Criminal Procedure (*Official Gazette of the FRY*, Nos. 4/77, 36/77 and 13/01), in force from 1977 until the entry into force of the CPC in March 2002, provided for basic assumptions and conditions for arrest and the ordering of detention.

265. The conditions of arrest and the ordering of detention were provided under article 191 of the Law, while articles 195 and 196 specified the conditions under which an organ of internal affairs may arrest a person and/or detain him/her. The same provisions ensure judicial control of the application of those measures by the organs of internal affairs.

266. By its Decisions (*Official Gazette of the FRY*, No. 71/00), the Federal Constitutional Court established that, in addition to others, article 196 of the Law on Criminal Procedure was not in conformity with the Constitution of the FRY. Article 196 allowed for the possibility of having an organ of internal affairs order exceptionally, before the initiation of an investigation, detention of a person for the maximum duration of three days only for reasons provided by article 191. Those reasons were the general reasons for the ordering of detention by the court. Accordingly, the organs of internal affairs no longer have the right to order detention measures, which brought the article in accordance with the provisions of the Constitution of the FRY.

267. The Law on Criminal Procedure allowed for the possibility of having authorized official persons of an organ of internal affairs arrest a person if there exists any of the reasons provided by its article 191. However, those persons were duty-bound to bring the arrested person without delay before the investigative judge (art. 195).

268. Considerable changes in the CPC were effected in the area of the granting of powers and the way in which the organs of internal affairs proceed, aimed at establishing a clear delineation between the activities of the judicial and the executive (police) branches of Government in accordance with the constitutional principles of the division of power.

269. One of the most important novelties was introduced into the pretrial proceedings, i.e. into the phase of the detection of a criminal offence, in which the powers of the organs of

internal affairs, under previous legal solutions, had been the largest. That novelty consisted of having the public, i.e. State, prosecutor take charge of pretrial proceedings.

270. The solutions contained in the CPC considerably improved and protected the position and the rights of the suspect before an organ of internal affairs.

271. An important novelty was the annulment of the so-called police detention, which an organ of internal affairs could order exceptionally, before the initiation of an investigation, against a person for the maximum duration of three days under the conditions which were also provided by the previous Law on Criminal Procedure. However, this provision was struck out since it had been established, as mentioned above, that it was not in conformity with the Constitution of the FRY.

272. Likewise, the right of the suspect to have a defence counsel when summoned and interrogated by an organ of internal affairs has also been regulated in a new way, one more favourable for the suspect. This issue has been regulated in accordance with the appropriate provisions of the CPC dealing with the question of obligatory or optional defence. It is essential that the suspect may or must have a defence counsel from the very moment he/she is brought before an organ of internal affairs, that he/she is interrogated according to the provisions regulating the interrogation of the accused, that a statement made in that way has the force of evidence in criminal proceedings, etc.

273. The CPC also regulated the “defence of the poor”, i.e. the obligation of the competent organ of internal affairs to provide a defence counsel to the suspect in cases of obligatory defence if he/she has no financial means to provide a counsel himself/herself. Certain novelties have been included regarding custody, entering residence and other premises and the search of residence and people, considering that measures restricting the freedom of movement and infringing upon the right of privacy were involved.

274. By these and other legal provisions, the CPC has been aligned with international acts and modern legal principles regulating the police and its work in all countries ruled by law.

275. The CPC contains provisions on arrest and the ordering of detention. Its provision of principle (art. 5) stipulates that a person deprived of liberty must be informed immediately in his/her own language or in a language he/she understands of the reasons of the deprivation of liberty and advised at the same time that he/she has the right to say nothing, that he/she has the right to take a defence counsel of his/her own choosing and to demand that his/her next of kin be advised of his/her deprivation of liberty. Likewise, the same article specifies that a person deprived of liberty without a court warrant must be brought before the investigative judge forthwith.

276. The CPC provisions establish the basic premises and conditions for the ordering of detention: detention can be ordered only under the conditions provided by this Code and only if the same purpose cannot be achieved by another measure (art. 141). Detention is ordered against a person for whom there exists a reasonable doubt that he/she has committed a criminal offence punishable with 20 years in prison or with a severer penalty, as well as against an accused person sentenced by a court of the first-instance to 5 years in prison or to a severer penalty provided he/she is not already detained. In order to ensure unhindered conduct of criminal proceedings, detention may also be ordered against a person for whom there exists a reasonable doubt that he/she has committed a criminal offence and that he/she is in hiding or it is not possible to establish his/her identity or if there exist other circumstances indicating the risk of flight; if there exist circumstances indicating that he/she will destroy, conceal, alter or forge the evidence on, or traces of, a criminal offence or if special circumstances indicate that he/she will obstruct the proceedings by influencing witnesses, accomplices or accessories; and if special circumstances indicate that he/she will repeat a criminal offence, complete an attempted

criminal offence or commit a criminal offence that he/she is threatening to commit (art. 142).

277. The CPC determines which organs are competent to order detention: detention is ordered by the decision of the competent court and that decision is served on the person to whom it relates at the moment of his/her arrest or not later than 24 hours from the time of the arrest, i.e. the arraignment before the investigative judge. The detained person may appeal the decision with the court chamber within 24 hours from the moment of the service of the decision, after which the appeal, along with the detention order and other documents, is forwarded immediately to the court chamber; if the investigative judge disagrees with the proposal of the public prosecutor regarding the ordering of detention, he/she will request that it be decided by the court chamber. The detained person may appeal the decision, which does not hold its execution; the court chamber is duty-bound to decide on the appeal within 48 hours (arts. 143–146).

278. Regarding the length of detention, the CPC specifies that, on the basis of the decision of the investigative judge, an accused person may be held in detention not longer than a month from the day of the arrest; thereafter he/she may be held in detention only on the basis of a decision to extend detention. Detention at the order of the court chamber may be extended by the maximum duration of another two months; the decision may be appealed, which does not hold its execution. If proceedings are conducted in respect of a criminal offence punishable with over five years in prison or with a more severe penalty, the council of the Supreme Court may, at the detailed proposal of the investigative judge or the State prosecutor, extend detention for important reasons by the maximum duration of another three months (art. 144).

279. The agreement of the investigative judge and the authorized prosecutor is needed to abolish detention. If such agreement is not achieved, the investigative judge will request that the court chamber decide the matter, which body is duty-bound to make the decision within 48 hours. If detention is abolished because of the expiration of the duration of detention, a decision to that effect will be taken by the investigative judge (art. 145). The ordering or cessation of detention after the handing over of the indictment to the court until the completion of the main hearing is regulated by special provisions (art. 146).

280. The accused person for whom detention has been ordered must have a defence counsel from the first interrogation. In that connection, the CPC expanded the right to the ex officio assignment of a defence counsel, while the Bar Association forwards a list of available attorneys to court presidents every six months from which the ex officio assignment of counsels is made in alphabetical and/or other pertinent order.

281. The CPC enables an arrested person to have a confidential conversation with his/her defence counsel with possible video-control, but not audio-control, by an authorized person (art. 75). Control of correspondence between the accused and his/her defence counsel is allowed only in the event of the existence of a reasonable doubt that it serves to prepare a flight and/or obstruct investigation, and is limited only to this stage of the proceedings. The defence counsel has the right to read the criminal charges or the request to carry out an investigation prior to the interrogation of the suspect (art. 74).

282. Defence counsels in criminal proceedings must be attorneys. An attorney may exceptionally be replaced by a law clerk, provided criminal proceedings are conducted for a criminal offence punishable with up to five years in prison. The number of defence counsels in criminal proceedings is limited to five; however, this provision does not exclude the possibility of hiring a larger number of counsels outside formal proceedings.

283. The adoption of the CPC accounted for the introduction of important changes concerning the powers and the way of conduct of the organs of internal affairs in respect of a person deprived of liberty. Accordingly, unlike the ordering of detention measures by an

organ of internal affairs provided by previous legal provisions, the CPC specifies that authorized official persons of the organs of internal affairs may arrest a person in the event of the existence of any reason provided by article 142; however, they must bring such person before the competent investigative judge without delay and not later than within eight hours. In the event of the existence of an irremovable obstacle to the arraignment of the arrested person within eight hours, the authorized official person of the organs of internal affairs must provide a special explanation of the delay to the investigative judge (art. 227).

284. An arrested person must be informed forthwith in his/her language of the reasons for his/her arrest and advised at the same time that he/she is under no obligation to say anything, that he/she has the right to take a defence counsel of his/her own choosing and that he/she may demand that his/her next of kin be informed of his/her arrest.

285. The purpose of the arrest under article 227 of the CPC is to ensure the suspect's presence so that he/she could be brought before the competent investigative judge. Consequently, an arrest is not made with the aim of taking any other action against the suspect; rather, an organ of internal affairs has an explicit obligation to bring an arrested person before the investigative judge without delay.

286. The CPC specifies that an organ of internal affairs may, exceptionally, keep in custody, not longer than 48 hours from the time of arrest, i.e. from the moment of his/her reply to the summons if he/she has been summoned as a suspect, an arrested and/or a suspected person under article 227, paragraph 1, and under article 226, paragraphs 7 and 8 respectively[6] for the purpose of collecting information or his/her interrogation (art. 229).

287. Under the CPC, a person may not be kept in custody longer than 48 hours from the time of arrest, i.e. from the moment of his/her reply to the summons if he/she has been summoned as a suspect (art. 229). Under this article, a custody decision must be brought immediately or not later than within two hours. The custody decision may be appealed by the suspect and his/her defence counsel. The appeal must be submitted to the investigative judge immediately. The investigative judge has the obligation to decide on the appeal within four hours from the receipt of the appeal. The submission of the appeal does not hold the execution of the custody decision.

288. The investigative judge of the competent court must be informed of the custody of a person immediately and may order that the person kept in custody be brought in immediately (art. 229, para. 4). The term "immediately" implies the moment of the taking of the decision on custody, which, in practical terms, means that the custody decision and the written act informing the investigative judge of the custody of a person are drawn simultaneously.

289. In the period from 1992 to June 2003, MUP RS personnel ordered the measure of arrest against 30,079 reported persons and the measure of detention against 35,450 persons. On average, the measure of arrest is ordered against 2,610 persons every year and the measure of detention against 3,938 persons.

290. The rescission of the so-called police detention accounted for the elimination of the most frequent complaint filed against the work of the organs of internal affairs: the use of the means of coercion against detained persons, aimed at extracting a statement or a

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[6] The articles provide for the collection of information from a person suspected of having committed a criminal offence, a person taking actions against in the pretrial proceedings provided by the CPC or a person in connection with whom it has been assessed during the collection of information that he/she may be considered a suspect.

confession of the commission of the criminal offence that those persons had been charged with.

291. Unlawful arrest is punishable under positive laws. The CL RS provides for the punishment with up to one year in prison of a person who imprisons another person unlawfully, holds him/her imprisoned or deprives him/her of the freedom of movement in another way (art. 63).

292. Under article 63 of the CL RS, the perpetrator of an unlawful arrest committed through the abuse of official capacity or powers will be punished with three months to five years in prison. The article also provides for two qualified cases: if an unlawful arrest has lasted longer than 30 days or if it has been committed in a cruel way or if the person arrested unlawfully has suffered severe impairment of his/her health or other serious consequences, the perpetrator will be punished with one to eight years in prison. If the person arrested unlawfully has lost his/her life as the consequence, the perpetrator will be punished with at least three years in prison.

293. In the period from 1992 to September 2002, authorized official persons of the organs of internal affairs in the territory of the Republic of Serbia had criminal charges brought against for six criminal offences of unlawful arrest.

294. It is recalled that the measure of arrest that may be taken by an organ of internal affairs is provided also by the Law on Minor Offences. This Law specifies that police officers and other official persons authorized for bringing in a person may bring in a person caught when committing a minor offence without an order of the magistrate if it is not possible to establish that person's identity; if he/she has no residence or a place of abode; if, by leaving the country to stay abroad, he/she may avoid the responsibility for a minor offence; or if bringing in is needed in order to prevent the continuation of the committing of a minor offence (art. 184).

295. The perpetrator of a minor offence under article 63, paragraph 1, must be brought in without delay. If the perpetrator of a minor offence has been caught in the commission of a minor offence and cannot be brought before the magistrate at once and there exists a reasonable doubt that he/she will take to flight or if there is a danger that he/she will continue to commit a minor offence in a direct way, the authorized official person of an organ of internal affairs may keep the perpetrator in custody for the maximum duration of 24 hours. Under the Law on Minor Offences, an authorized person of an organ of internal affairs may order custody of a person caught in the act of committing a minor offence under the influence of alcohol until he/she regains sobriety, but not longer than 12 hours (art. 188).

296. Under article 12 of the Law on Home Affairs and in accordance with the provisions on custody, a decision to keep a person in custody is issued immediately. The person kept in custody has the right to submit an appeal to the Minister of Internal Affairs within 12 hours from the receipt of the decision. The Minister is duty-bound to decide on the appeal not later than within 24 hours from the submission of the appeal. The appeal does not hold the execution of the decision.

297. In addition to the provisions of the Constitution of the FRY, Constitutional Charter, CL FRY and the CPC, mention will be made also of some further provisions of the CPC.

Article 89, paragraphs 7 and 8

An accused person is interrogated in a civil manner and with full respect for his/her person. No force, threat, trick, promise, extraction, exhaustion or other similar means may be used against the accused (art. 131, para. 4) in order to obtain from him/her a statement or make him commit some act that might be used against him/her in evidence.

Article 103, paragraph 1

During the questioning of a witness, it is not allowed to use tricks or ask questions suggestive of desired answers.

298. The already mentioned Law on Criminal Procedure prohibited the use of medical interventions against, or the administration of hallucinogenic drugs to, an accused person or a witness in order to influence their will in making a statement (art. 259).

299. Internal regulations elaborated also the principles of medical ethics relating to the role of medical staff, doctors in particular, in the protection of prisoners and detainees against torture and other cruel, inhuman and degrading treatment and punishment.

300. The criminal legislation of the FRY incriminates all forms of complicity, including complicity in the commission of criminal offences which are the subject of this report.

Article 5

301. The basic principles of the application of the criminal legislation of the FRY are established in the CL FRY (art. 104).

The Yugoslav criminal legislation is applicable to every person who commits a criminal offence in the territory of the FRY.

The Yugoslav criminal legislation is applied also to every person who commits a criminal offence on board a domestic vessel irrespective of where the vessel may have been during the commission of the criminal offence.

The Yugoslav criminal legislation is applicable also to every person who commits a criminal offence on board a domestic civilian aircraft while airborne or on board a domestic military aircraft, irrespective of where the aircraft may have been during the commission of the criminal offence.

302. The Yugoslav criminal legislation is applicable also to every person who commits a criminal offence from the group of criminal offences against the constitutional order and the security of the FRY abroad.

303. Likewise, the criminal legislation of the FRY is also applicable to its citizens who commit some other criminal offence save those from the group of criminal offences against the constitutional order and the security of the FRY abroad and found themselves in the territory of the FRY or were extradited to it.

304. The criminal legislation of the FRY is also applicable to an alien who commits, outside of the territory of the FRY, a criminal offence against the FRY or its citizenry, which offence may not be from the group of criminal offences against the constitutional order or the security of the FRY and found himself/herself in the territory of the FRY or was extradited to it.

Article 6

305. The Constitution of the FRY established the rights of aliens in accordance with the standards of international law and international treaties to which the FRY had acceded. It provided for the enjoyment by aliens of the freedoms, rights and duties laid down in the Constitution, federal law and international treaties. An alien could be extradited to another State only in cases provided for under international treaties which were binding on the FRY. The right of asylum was guaranteed to foreign citizens and stateless persons persecuted for their advocacy of democratic views or for participation in movements for

social or national liberation, for the freedom and rights of the human person or for scientific or artistic freedom (art. 66).

306. The Charter on Human Rights specifies that any alien who reasonably fears that he/she might be persecuted because of his/her race, colour, sex, language, religion, ethnic affiliation, membership of a group or political conviction has the right of asylum in Serbia and Montenegro. The asylum granting procedure is determined by law (art. 38).

307. The Charter on Human Rights also specifies that an alien may be expelled from the territory of Serbia and Montenegro only on the basis of a decision of the competent authorities and by the procedure provided by law. However, it goes on to say that no expelled person may be sent to a place where he/she might be persecuted because of his/her race, religion, affiliation to a certain social group or political opinion or where his/her rights guaranteed under this Charter might be seriously violated (art. 37).

308. International legal assistance in criminal matters is provided under the provisions of international treaties. If no international treaty exists or if certain matters are not regulated by an international treaty, international legal assistance in criminal matters is provided under the provisions of the CPC (art. 530).

309. International legal assistance in criminal matters implies in particular the execution of certain process actions, such as interrogation of the accused, a witness or a forensic expert, investigation, search of premises and persons, seizure of objects and the forwarding of acts, written materials and other items related to the criminal proceedings in the requesting State.

310. The entire procedure for the provision of international legal assistance and the execution of international treaties in criminal matters is regulated by the provisions of the CPC (arts. 530–538). The Ministry for Human and Minority Rights of the State Union of S&M is responsible for questions related to extradition and international legal assistance.

311. In connection with article 6 of the Convention, in addition to the provisions of the CPC on criminal charges (arts. 222–240) and the measures to ensure the presence of the accused (arts. 133–153) that have already been discussed in the report, special mention is also made of the provisions of the CPC related to aliens who commit a criminal offence on the territory of the FRY (arts. 536–538). These provisions are identical to the provisions of the preceding Law on Criminal Procedure.

312. The said articles of the CPC specify that, in case of the commission of a criminal offence in the territory of the FRY by an alien residing in a foreign State, that State may be ceded all case documents necessary for prosecution and trial, provided it is not opposed to it. A decision on cession is taken by the competent State prosecutor prior to the initiation of investigation, an investigative judge during investigation at the proposal of a State prosecutor or a court chamber prior to the beginning of the main hearing (art. 536).

313. The cession may be allowed in case of a criminal offence punishable with up to 10 years in prison and public traffic violation offences. If the injured party is a citizen of the FRY, the cession is not allowed if he/she is opposed to it, except if a guarantee has been given for the realization of his/her property rights. If the accused is in prison, the foreign State is requested to inform in the most convenient way whether it would take over prosecution within 15 days. Practice has shown that the most frequent offences were public traffic violations (art. 536, para. 4).

314. Likewise, a foreign State may have requested the FRY to take over the prosecution of a Yugoslav citizen or a person residing in the FRY for a criminal offence committed abroad and, to that end, would forward the case documents to the competent State prosecutor within whose area of jurisdiction the person resided (art. 537).

Article 7

315. The basic constitutional and legal provisions on the equality of all citizens before the law and the applicability of the criminal legislation of the FRY to all persons who committed a criminal offence on its territory have already been repeatedly expounded in this report.

316. In addition to the legislative solutions mentioned earlier in the report, an important principle in the area of extradition is that the turning over of accused or sentenced persons is carried out under the provisions of international treaties or, in the absence of an international treaty or a non-regulation of certain matters by such treaties, under the provisions of the CPC (art. 539).

317. As has been said, the turning over of accused and sentenced persons is regulated by the CPC (arts. 539–555) and its provisions are almost fully identical to those of the preceding Law on Criminal Procedure. The basic suppositions for the extradition of a person are: the person whose extradition has been requested must not be a citizen of the FRY; the offence for which the extradition has been requested must not have been committed in the territory of the FRY, against it or its citizenry; the offence for which the extradition has been requested must be a criminal offence also under the domestic law and the law of the State in which it was committed; the period for prosecution or the execution of a penalty set by the statute of limitations under the domestic law must not have expired prior to the detention of an alien or his/her interrogation as an accused person; an alien whose extradition has been requested must not have already been sentenced or acquitted by a domestic court for the same offence or must not have had criminal proceedings instituted against him/her in the FRY for the same offence committed against the FRY; the true identity of the person whose extradition has been requested must have been established and sufficient evidence made available that the person whose extradition has been requested had committed a certain criminal offence or a legally valid sentence had to be in existence.

318. The procedure for turning over accused or sentenced aliens is initiated at the request of a foreign State. The request is made through diplomatic channels and has to be documented in a proper way.

319. The extradition of an alien enjoying the right of asylum is prohibited in case of a political or military criminal offence; in the case of a threat to the alien's life or freedom because of race, religion, ethnic belonging, social status or political conviction; that of the existence of serious reasons to indicating that the alien would be subjected to inhuman treatment or torture in the requesting State; in the case that no defence counsel had been made available to the alien in the pre-extradition proceedings; and in the case that has been requested for criminal offences punishable in the domestic law with up to three years in prison or the pronounced penalty of deprivation of liberty by a foreign court of up to one year (art. 548).

Article 8

320. The FRY/S&M is a party to a number of bilateral conventions or treaties regulating, in addition to the aforementioned international instruments, extradition matters, namely:

Convention on the extradition of accused persons of 22 June 1926 with the Government of Albania;

Treaty on legal assistance in civil and criminal matters of 31 March 1982 with the Government of Algeria;

Extradition Treaty of 1 February 1982 with the Government of Austria;

Convention on extradition and legal assistance in criminal matters of 4 June 1971 with the Government of Belgium;

Mutual Legal Assistance Treaty of 23 March 1956 with the Government of Bulgaria;

Convention between the Government of Serbia and the United Kingdom of Great Britain and Northern Ireland on mutual extradition of accused persons of 23 November 1900;

Convention on mutual legal relations of 18 June 1959 with the Government of Greece;

Agreement between the Socialist Federal Republic of Yugoslavia and the Kingdom of Denmark on mutual transfer of sentenced persons of 28 October 1988;

Convention between the Kingdom of Serbs, Croats and Slovenes and the Government of Italy on the extradition of accused persons of 6 April 1922;

Legal and Judicial Cooperation Agreement of 23 May 1986 with the Government of Iraq;

Convention on legal assistance in civil and criminal matters of 19 September 1984 with the Government of Cyprus;

Conventions on mutual legal communication of 7 March 1968 and of 25 April 1986, respectively, with the Government of Hungary;

Convention on rendering legal assistance in civil, family and criminal matters of 8 June 1981 with the Government of Mongolia;

Extradition Agreement concluded between the Government of the Socialist Federal Republic of Yugoslavia and the Government of the Federal Republic of Germany on 26 November 1970;

Convention on legal communication in civil and criminal matters of 6 February 1960 with the Government of Poland;

Legal Assistance Treaty of 8 October 1960 with the Government of Romania;

Treaty signed with the Government of the Union of Soviet Socialist Republics on legal assistance in civil, family and criminal matters of 24 February 1962;

Convention between the Kingdom of Serbia and the Government of the United States of America on the extradition of accused persons of 12 October 1901;

Convention between the Government of the Socialist Federal Republic of Yugoslavia and the Government of the Czech and Slovak Socialist Republic on mutual transfer of sentenced persons of 23 May 1989, in respect to the Slovak Republic;

Extradition Convention of 17 November 1973 with the Government of Turkey;

Treaty entered into with the Government of the Union of Soviet Socialist Republics on legal assistance in civil, family and criminal matters of 24 February 1962, in respect to Ukraine;

Convention on the extradition of accused and sentenced persons of 23 March 1970, with the Government of France;

Convention between Serbia and the Netherlands on the extradition of accused persons of 28 February 1896;

Civil and Criminal Judgments Legal Assistance Convention between the Government of the Federal Republic of Yugoslavia and the Government of the Republic of Croatia of 15 September 1997;

Convention between the Socialist Federal Republic of Yugoslavia and the Czech and Slovak Socialist Republic on mutual transfer of convicted persons of 23 May 1989, in respect to the Czech Republic;

Convention between the Government of Serbia and the Government of Switzerland on the extradition of accused persons of 16 November 1887;

Convention on legal assistance in criminal matters and on extradition of 8 July 1980, with the Government of Spain.

Article 9

321. International legal assistance is rendered and international treaties relating to criminal justice are executed under the CPC (arts. 530–538), which contains almost identical provisions as the previous Criminal Procedure Code.

322. International legal assistance is made conditional on the existence of international treaties and in the absence of any such treaties or the relevant provisions on CPC (art. 530). Besides the international conventions and treaties referred to above, the FRY/S&M is a party to a number of bilateral conventions or treaties governing legal assistance in criminal matters, listed below:

Convention on the extradition of accused persons of 22 June 1926 with the Government of Albania;

Treaty on legal assistance in civil and criminal matters of 31 March 1982 with the Government of Algeria;

Extradition Treaty of 1 February 1982 with the Government of Austria;

Convention on extradition and legal assistance in criminal matters of 4 June 1971 with the Government of Belgium;

Mutual Legal Assistance Treaty of 23 March 1956 with the Government of Bulgaria;

Convention between the Government of Serbia and the Government of the United Kingdom of Great Britain and Northern Ireland on mutual extradition of accused persons of 23 November 1900;

Convention on mutual legal relations of 18 June 1959 with the Government of Greece;

Agreement between the Socialist Federal Republic of Yugoslavia and the Kingdom of Denmark on mutual transfer of sentenced persons of 28 October 1988;

Convention between the Kingdom of Serbs, Croats and Slovenes and the Government of Italy on the extradition of accused persons of 6 April 1922;

Legal and Judicial Cooperation Agreement of 23 May 1986 with the Government of Iraq;

Convention on legal assistance in civil and criminal matters of 19 September 1984 with the Government of Cyprus;

Conventions on mutual legal communication of 7 March 1968 and of 25 April 1986, respectively, with the Government of Hungary;

Convention on rendering legal assistance in civil, family and criminal matters of 8 June 1981 with the Government of Mongolia;

Extradition Agreement concluded between the Government of the Socialist Federal Republic of Yugoslavia and the Government of the Federal Republic of Germany on 26 November 1970;

Convention on legal communication in civil and criminal matters of 6 February 1960 with the Government of Poland;

Legal Assistance Treaty of 8 October 1960 with the Government of Romania;

Treaty signed with the Government of the Union of Soviet Socialist Republics on legal assistance in civil, family and criminal matters of 24 February 1962;

Convention between the Kingdom of Serbia and the Government of the United States of America on the extradition of accused persons of 12 October 1901;

Convention between the Government of the Socialist Federal Republic of Yugoslavia and the Government of the Czech and Slovak Socialist Republic on mutual transfer of sentenced persons of 23 May 1989, in respect to the Slovak Republic;

Extradition Convention of 17 November 1973 with the Government of Turkey;

Treaty entered into with the Government of the Union of Soviet Socialist Republics on legal assistance in civil, family and criminal matters of 24 February 1962, in respect to Ukraine;

Convention on the extradition of accused and sentenced persons of 23 March 1970, with the Government of France;

Treaty between the Government of Serbia and the Government of the Netherlands on the extradition of accused persons of 28 February 1896;

Civil and Criminal Judgments Legal Assistance Convention between the Government of the Federal Republic of Yugoslavia and the Republic of Croatia of 15 September 1997;

Convention between the Government of the Socialist Federal Republic of Yugoslavia and the Government of the Czech and Slovak Socialist Republic on mutual transfer of convicted persons of 23 May 1989, in respect to the Czech Republic;

Convention between the Government of Serbia and the Government of Switzerland on the extradition of accused persons of 16 November 1887;

Convention on legal assistance in criminal matters and on extradition of 8 July 1980, with Spain.

Article 10

323. Parallel with being continuously reminded of the applicability of the constitutional and other legal provisions relating to the prohibition of torture or any other cruel, inhuman or degrading treatment or punishment, law enforcement personnel are continually being supervised and their conduct scrutinized. Education and information regarding the prohibition of torture or torture-related misconduct by the MUP RS law enforcement personnel are fully included both in their basic and advanced training and in police rules, instructions and procedures applied on a daily basis.

324. Education and information provided for law enforcement personnel regarding the prohibition of acts of torture as defined in article 1 of the Convention are an integral part of the basic and advanced skills training and procedures applied in day-to-day policing. The training received at the secondary and post-secondary level police schools and at the Police Academy, as well as the various seminars and courses, pay particular attention to lawful and proper treatment, in particular if means of coercion are used or other police powers exercised.

325. Furthermore, every year in the framework of compulsory subjects, the MUP RS personnel receive additional training in lawful and proper treatment and in the exercise of police powers. Once disciplinary or criminal proceedings are completed, all members of the MUP RS personnel have had their attention drawn to misconduct of all kinds manifested in practice, for the purpose of preventing and suppressing it in the future. Also, senior police officials give them direction and guidance necessary before they could go out on their daily assignments.

326. In this context, it is important to single out foreign language courses for law enforcement personnel applying new methods of instruction and structure of lectures where United Nations resolutions and conventions relating to freedoms, rights and duties of man and the citizen are included. The new training programmes for the MUP RS personnel also cover the provisions of the law of international conflicts and humanitarian law, code of conduct for law enforcement officers, etc.

327. Similarly, the Instructions concerning police ethics code and procedures employed in policing spell out that no member of the MUP RS personnel may order, carry out, instigate or acquiesce in torture or any other cruel, inhuman or degrading treatment or punishment of an individual. Such practices are in violation of the dignity of the human person and endanger his/her life, freedom and safety. They do not respect, either, his/her privacy and family life or his/her right of assembly and association or other human rights or freedoms, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

328. An MUP RS personnel member witnessing any police misconduct is duty-bound to report it to his/her superiors, the Inspector General or to any civil supervisory body mandated to exercise control over the functioning of the MUP RS. It is worth noting in particular that the Instructions mentioned above were incorporated into school and academic programmes in 2003/2004 for all police trainees. Henceforth, the Instructions issued in regard to the duties and procedures employed in the work of the MUP RS personnel became an integral part of their training programmes.

329. In cooperation with the international community, European Union institutions and organizations, various foundations and non-governmental organizations, a large number of seminars, training courses, workshops and round table conferences on human rights protection and policing standards were held over the past two years. For instance, the OSCE co-hosted a course in modern police standards; The Hans Seidel Foundation co-hosted seminars on the functions of police and their conduct towards the citizens and on community policing or seminars for the training of senior police officials, etc. The OSCE and the Hans Seidel Foundation held a symposium on the reform of the MUP RS, while the Council of Europe helped to organize a Seminar on Community Policing: Police and the Media.

330. Numerous seminars and other training programmes have been realized in cooperation with the Danish Human Rights Centre, as one of the institutions in charge of the police reform project, along with the Konrad Adenauer and Rockefeller Brothers foundations. The New York City Human Rights and Law Enforcement Institute organized a seminar called "Universal Human Rights Standards and Community Policing".

331. In the course of 2002, the international community sponsored four five-day seminars on human rights co-hosted by the Belgrade Centre for Human Rights and the MUP RS. The seminars were attended by 120 police officers.

332. NGOs helped elaborate a few bills relating to security. In this context, the Belgrade Anti-War Action Centre developed one of the drafts of a Law on Serbian State Security Service (SDB) files. The NGO called Experts' League, on the other hand, took part in drawing up working draft texts of the Law on the Security/Intelligence Service and the Home Affairs Act.

333. In April 2002, a symposium on "Reform of the MUP RS" was held in Vrnjacka Banja. The participants examined the working texts of the draft Home Affairs Act, the draft Law on the Security/Intelligence Agency and the draft Law on SDB files. The working texts of these bills were thus both subjected to public scrutiny and discussed by experts in order to refine them. In this respect, account was taken that the participants consisted of government representatives, the then Federal Ministries of Foreign and Internal Affairs, the Army of Yugoslavia and other State organs. Other eminent experts, researchers and NGOs (e.g. League of Experts, Anti-War Action Centre, Committee of Human Rights Lawyers) also took part.

334. At the same time, effective modern-day policing and its compatibility with the relevant international standards have made it necessary to examine the usefulness and practicability of advisory bodies composed of members of the public and law enforcement personnel, both in all territorial subdivisions and at the MUP RS headquarters.

335. With the assistance of the Belgrade Office of the International Committee of the Red Cross (ICRC), contacts were made and a number of lectures or talks were given on the topic "Human rights and humanitarian law in the context of the professional concepts of maintenance of law and order". In this respect, chief police officials received copies of a book entitled *To Serve and To Protect: Human rights and humanitarian law for police and security forces* authored by Cees de Rover, a senior ICRC official, which deals with the application of human rights and humanitarian law by police and security forces. Moreover, 17,000 copies of an ICRC brochure devoted to the same subject matter were distributed among police officers on the beat.

336. The intensive process of reform is going on in the other sectors of work of the MUP RS, primarily in regard to action against terrorism and organized crime, border police, public police, traffic and fire police, police training, etc. In the new education of law enforcement personnel, as proposed in the draft law on the reform of police training, particular attention is being given to human rights protection, including new training programmes, education and practical training of law enforcement personnel.

337. With a view to ensuring compliance with the constitutional and legal provisions on the prohibition of torture and other inhuman or degrading treatment or punishment, the conduct of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment, is kept under systematic supervision and review.

338. In this report, reference is made to the laws and regulations of the Republic of Serbia governing treatment of persons subjected to any form of arrest or detention by law enforcement personnel. This personnel is authorized to use coercion only on strictly regulated terms and conditions. They are required to pass a test in the relevant professional skills and are constantly tested to verify how they exercise the power to use coercion. Except for a few instances of exceeding these powers, there are no reported cases of acts of torture or other cruel, inhuman or degrading treatment or punishment inflicted on persons subjected to any form of arrest, detention or imprisonment.

Article 11

339. Within the framework of the ongoing reform of the MUP RS, based on professionalism, emptying law enforcement of politics, accountability and on supervision, the Government of the Republic of Serbia appointed the Inspector General of the Department of Public Security in June 2003. In this way, a new organizational chart was put in place and conditions created for significant improvement of internal control in the MUP RS.

340. The main task of the Office of the (Police) Inspector General is to make sure that police rules, instructions, methods and practices do not contravene the law, regulations and other relevant normative legal acts. The purpose is to ensure that the highest legal acts of the State, its laws and other enacted legislation, as well as the ratified international documents, are respected by the MUP RS (law enforcement) personnel. Consequently, this supervision and control are principally aimed at police powers and discretion, benefiting the community as a whole rather than individuals or certain political options. Likewise, the Office of the Inspector General has taken steps and measures within its jurisdiction to investigate, prevent, suppress and sanction any misuse or irregularities related to the methods and practices of MUP RS personnel.

341. Specific activities were undertaken to investigate the allegations, made in an Amnesty International report communicated to the MUP RS, that 16 individuals, who had been arrested in the police action codenamed "Sabre" during the enforcement of a state of emergency, were subjected to torture. The investigations carried out by the Office of the Inspector General into these allegations proved that police had used coercion against six persons in a manner and scope contrary to the provisions of article 22 of the Home Affairs Act and article 6 of the MUP RS Regulations regarding the methods and conditions of using coercive means. Thus, it was established that the allegations of torture and ill-treatment to which Mr. Milan Sarajlic, former Deputy Public Prosecutor of the Republic of Serbia, was reportedly subjected were without foundation and that there was no abuse on the part of arresting officers. Since the police officers who had overstepped their powers in using coercion in the cases referred to by Amnesty International in the report have not been identified, the police stations concerned were instructed to do so as soon as possible and to take appropriate action in accordance with the law and advise the relevant MUP RS departments accordingly.

342. However, it should be emphasized at this point that even Amnesty International did not refer to larger-scale acts of torture committed against certain individuals, in particular those in custody, but that these were only sporadic cases that are fully investigated each time such allegations are made, so as to prevent any form of torture, whether of an individual or general nature, as defined in the Convention.

343. It is recalled that interrogation rules have already been examined in this report. The relevant legal provisions also contain arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment as well as references to practical applications.

344. Under the relevant Law of the Republic of Serbia on the execution of penal sanctions, convicted or detained persons or those who received penalties for minor offences are entitled to be treated humanely and in a manner ensuring respect for their person and dignity and maintaining their physical and mental health. Convicts are treated in a manner which best corresponds to their personality and which takes account of the achieved level of their re-education and social rehabilitation. A convicted person is encouraged to develop a sense of personal responsibility and to reform himself/herself.

Article 12

345. The basic rules relating to a prompt and impartial investigation proceeded to by the competent authorities when there is reasonable ground to believe that an act of torture has been committed, have been incorporated into the CPC (arts. 241–264), as referred to earlier. There are no explicit provisions in the CPC directing investigative action in the case of torture or any other similar criminal offence. This is a consequence of torture not constituting a separate criminal offence. Furthermore, strict application of legal provisions will prevent any acts of torture or similar acts from being committed during investigation proceedings.

346. The CPC spells out that investigation is started against a person if there is reasonable ground to believe that he/she has committed a criminal offence. The investigation aims to gather evidence and facts necessary for an informed decision whether to bring charges or drop further proceedings, to obtain evidence that may not be used at the main hearing or the evidence that may be useful to the proceedings and the presentation of which is deemed appropriate (art. 241).

347. Investigation is proceeded to at the request of the State prosecutor which is submitted to the investigative judge of the competent court (art. 242). Upon receiving the request and reading the files of the case, the investigative judge makes an informed decision to start an investigation (art. 243). He/she may agree with the State prosecutor not to proceed to investigation, if the evidence gathered on the criminal offence concerned and the person responsible for it is not sufficient to bring charges (art. 244).

348. The investigative judge will decide to suspend the investigation when the State prosecutor, while the investigation is still under way or once it is completed, indicates that he/she will not prosecute the case (art. 253). The investigation will be suspended by the Chamber (article 24, paragraph 6, of CPC) adjudicating any matter arising out of the ongoing investigation if the offence with which the person is charged is not an officially prosecuted offence, or if there are circumstances absolutely excluding the person's criminal liability and no security measure may be applied, or if limitation is applicable to prosecution of the case or if the offence is subject to an act of pardon or clemency, or if there are other circumstances precluding prosecution altogether, or if there is no evidence that the suspect has committed the criminal offence in question (art. 254).

349. The investigative judge will conclude the investigation if he/she is satisfied that the case has been sufficiently clarified, whereupon he/she will advise the State prosecutor that his/her investigation has been closed. The latter will then have 15 days to request that the investigation be widened or to bring charges or indicate that he/she will not prosecute (art. 258).

350. Application to proceed to investigation may be submitted to the investigative judge both by the injured complainant and by a plaintiff pursuing private prosecution. In this case, investigation is started, carried out, stopped or suspended under the provisions applicable to the investigation proceeded to upon request of the State prosecutor. The investigative judge will communicate the completion of the investigation to the wronged party as the complainant or to the private complainant, advising them that they have 15 days in which to file a formal complaint or a private complaint. Should they fail to do so, prosecution will be considered as to have been abandoned and the proceedings will be suspended by adjudication (art. 259).

Article 13

351. The basis for the protection of fundamental civil rights has been established by the FRY Constitution. The right to complain is a constitutional right. Therefore, the FRY Constitution provided that everyone had equal protection of his/her rights in the proceedings determined by the law. Everyone was guaranteed the right of appeal or recourse to other legal remedy against a decision concerning his/her legally founded right or interest (art. 26 thereof).

352. Similarly, the Constitution of the Republic of Serbia stipulates that everyone is entitled to equal protection of his/her rights in the proceeding before a court of law, a government agency or any other agency or organization. Every individual is guaranteed the right to appeal or to apply other legal remedy against a decision concerning his/her right or interest founded on law (art. 22 thereof).

353. The Charter of Human and Minority Rights also provides for the right to appeal as a fundamental human right. Everyone has the right to beneficial judicial protection in the case of violation or denial of any human or minority right guaranteed under this Charter, as well as the right to elimination of the consequences of such violation (art. 9). Everyone has the right to appeal or some other legal remedy against any decision on his/her rights, duties or legally founded interests (art. 18).

354. In conformity with this principle, the CPC (formerly Criminal Procedure Law) and other normative legal acts relating to court or administrative proceedings to safeguard civil rights regulate more specifically the right to complain and other legal action including appeal and other remedy, ordinary or exceptional.

355. Violation of the right to recourse is sanctioned under the Penal Code of the FRY (art. 196: infringement of the right to recourse) and the Penal Code of the Republic of Serbia (art. 74: criminal offences against human rights and freedoms).

356. Recourse to appeal as an ordinary legal remedy available is provided for under the CPC (arts. 363–403). The basic postulate of the right to appeal is that an appeal is lodged, as a rule, against a judicial judgement at a lower level, though an adjudication or a judgement at a higher level may be appealed. Finally, an appeal may be brought before the Federal Court, now the State Union (of Serbia and Montenegro) Court. The appeal is brought by an authorized person, normally within 15 days of notification of a judgement. An appeal filed within this period will delay the enforcement of a judgement. The appeal must state the ground for contesting the judgement (grave breaches of criminal proceedings or violation of the Penal Code, wrong or incomplete evidence gathered). A court deciding on the appeal lodged by an individual should take account of the *reformatio in peius* prohibition.

357. With regard to the right to complain or appeal, both the FRY Constitution and the Charter of Human Rights specify that all the rights and freedoms recognized and guaranteed by them, including the right to complain, are protected before a court of law.

358. The competent authorities, police in the first place, ensure that the complainant and witnesses who have made a statement are protected against ill-treatment or intimidation as a consequence of the complaint or any evidence given.

Article 14

359. The FRY Constitution embodies the following provisions:

Article 27, paragraph 4

A wrongfully convicted or unlawfully detained person shall be entitled to rehabilitation and compensation for damages from the State and to other rights as envisaged by federal law.

Article 123

Everyone shall be entitled to compensation for damages sustained as a result of unlawful or improper actions of an official or State agency or organization which exercises public powers, in conformity with the law.

The State shall be obliged to pay compensation for damages.

The injured party shall have the right, in accordance with the law, to claim compensation directly from the individual responsible for the damage.

360. The Charter of Human Rights sets out:

Article 22

Any person who has been sentenced unreasonably for a punishable act shall have the right to be rehabilitated and paid compensation by the State.

361. The above provisions have been built into the CPC as one of its principles laying down that a person arbitrarily convicted of a criminal offence or unlawfully arrested is entitled to rehabilitation and to fair and adequate compensation, as well as to other rights as established by the law. Thus, the CPC provides for the right to compensation also to an individual who has suffered as a result of an error or improper action by a State authority. The right to a paid compensation implies also rehabilitation of the person whose reputation has been damaged.

362. Redress for arbitrary conviction is available under the relevant CPC provisions (arts. 556–564). In case of arbitrary conviction, a person is entitled to paid compensation if he/she has been imposed an effective penalty or found guilty and received no sentence and when upon invoking an exceptional legal remedy, the retrial proceedings have been suspended by a legally valid decision. Or when he/she has been cleared of the charges by an enforceable judgement or when the charges have been overturned. The CPC then enunciates the cases where the right to fair and adequate compensation may not be enforced (art. 556).

363. The right to fair and adequate compensation is also available to a person who has been in custody but has not been arraigned or if further proceedings have been suspended by a legally valid decision. It is further available in case the enforceable judgement has acquitted a person of all charges or when the case has been thrown out of court. A person serving a custodial sentence may be entitled to a fair and adequate compensation upon a retrial or application to protect the legality or examine the legality of the enforceable judgement, if a prison sentence of shorter duration than the one already being served has been passed on him/her, or if the imposed criminal sanction is other than imprisonment, or in case he/she has been found guilty but received no sentence. Compensation is affordable also to a person who has been unlawfully arrested due to an error or improper action by the competent authorities, or who has been subjected to longer detention or imprisonment, or who has been detained longer than the prison sentence imposed on him/her (art. 560).

364. With respect to payment of compensation for damages, a distinction should be made between material and non-material loss or damage. Compensation for material damage or real loss of profit or gain takes into account:

- Compensation for the unpaid emoluments resulting from employment (away-from-home allowance, paid annual leave, holiday entitlement, pension and disability insurance entitlements);
- Compensation for impaired health or aggravated health condition due to imprisonment or detention or for the loss of health-care entitlement;
- Reimbursement of the expenses incurred in relation to mailing food parcels and other supplies to the convicted person or reimbursement of the travel expenses for family visits to him/her;
- Reimbursement of the expenses paid during the criminal proceedings, refund of the paid fine under a previous adjudication, compensation for the fulfilment of the property-legal requirement related to arbitrary conviction;
- Compensation for loss of a fixed annual income due to a total or partial work incapacitation or on account of the injured party's increased needs or in case his/her opportunities for further development have been narrowed or ruined.

365. Compensation for non-material damage or loss implies compensation for physical pain and suffering as well as for the psychological trauma or mental pain and suffering inflicted, for mental harm, diminished capacity to earn a living as a result of physical disability or impaired health, and for other non-material damage.

366. The CPC provides that before a compensation claim is filed before a competent court, the injured party should notify in writing the authority designated in the regulations of the Republic of Serbia, i.e. the Ministry of Justice of the Republic of Serbia, or where compensation is claimed under a military court decision, the Federal Ministry of Defence, for the purpose of agreeing on the existence of a loss or damage and on the amount of compensation (art. 557).

367. In the reporting period, compensation claims in the Republic of Serbia were broken down as follows:

1992	100 claims with 9 settlements agreed with the parties
1993	78 claims with 4 settlements agreed with the parties
1994	88 claims with 17 settlements agreed with the parties
1995	119 claims with 17 settlements agreed with the parties
1996	114 claims with 5 settlements agreed with the parties
1997	115 claims with 13 settlements agreed with the parties
1998	189 claims with 31 settlements agreed with the parties
1999	113 claims with 12 settlements agreed with the parties
2000	214 claims with 38 settlements agreed with the parties
2001	361 claims with 51 settlements agreed with the parties
2002	371 claims (up to 1 November 2002) with 76 settlements agreed with the parties

368. The right to compensation resulting from arbitrary punishment is also provided for under the Minor Offences Act. This right may be exercised by anyone on whom a penalty or protective measure has been imposed by an effective decision, if the proceedings for minor offences have been dropped through an exceptional remedy (art. 299).

369. Also, the right to compensation may be exercised by a person on whom a penalty is imposed before the decision on the minor offence becomes effective if the appeal results in the proceedings being abandoned; a person detained while the proceedings for the minor offence are going on but which have eventually been dropped; a person who has completed his/her prison sentence and who, upon an exceptional remedy or appeal against the decision by which enforcement was ordered before the decision goes into effect, is pronounced a prison sentence that is shorter than the sentence he/she has already served; or by a person who has been detained without grounds longer than permitted by the law as a result of error and unlawful handling of the case by the assigned judge (art. 300).

370. The right to a refund of money, including reimbursement of the paid fines, restitution of benefits from property, or restitution of an item or an equivalent value of the confiscated item is exercised by a person who has been fined unfairly or on whom a protective measure of withdrawing property benefits from him/her or a measure of confiscation of an item has been imposed in a case involving a minor offence (art. 301).

371. In cases of improper use of coercion or overstepping of powers by authorized personnel, the question of compensation for non-material loss suffered by victims of such misconduct is often being raised.

372. Compensation for non-material loss or damage sustained by persons who have been subjected to any form of ill-treatment or misuse of coercion by law enforcement personnel has been examined in proceedings (litigation) before the courts following the filing of compensation claims by the injured parties in accordance with the Law on Contracts and Torts. In other words, individual complainants may exercise the right to compensation for non-material loss or damage only in courts, provided that their complaint is ruled by the court to be founded and that the authorized MUP RS personnel have overstepped or misused their powers.

373. The right to compensation for non-material loss or damage may be claimed before a court even if the case has not been previously reported to the MUP RS. Once the adjudication by the court, finding the claim founded and determining the amount of compensation, becomes effective and enforceable, the MUP RS will discharge its obligation to pay the specific amount awarded by the court.

374. Between 1 January 2001 and 30 June 2003, individuals filed 482 complaints before competent courts for compensation of non-material loss or damage suffered as a consequence of misuse or overstepping of powers by authorized law enforcement officials. Until June 2003 the MUP RS executed 63 effective and enforceable adjudications ordering payment of compensation for non-material loss to victims. As to the outcome of other proceedings instituted by complainants/claimants, the MUP RS has not been advised as yet.

375. In summary, it should be recalled that the right to compensation for both material and non-material loss or damage is regulated by the Law on Contracts and Torts (*Official Gazette of the SFRY*, Nos. 29/78, 39/85, 57/89; *Official Gazette of the FRY*, No. 31/93).

376. Under the above Law, the purpose of compensation of material loss or damage is to restore the state which had existed prior to the loss or damage was inflicted (arts. 185–198). When it is absolutely impossible, or only partly possible, to restore the previous state, the court will award an adequate sum of money that the injured party should be paid in compensation by the person responsible for the damage. Compensation may also be awarded in case of death, bodily harm or health impairment. As a rule, it is awarded as a fixed amount payable in advance each month for lifetime or for a specified period of time (art. 188). Besides, in case of death, bodily harm or impaired health, compensation also includes the funeral expenses for the victim, a lump sum paid to his/her dependant(s), restitution of medical expenses or earnings lost as a result of temporarily or permanently reduced capacity for employment or temporary or permanent incapacitation (arts. 193–

195). Material loss or damage may also be compensated when a person violates the honour of another person or spreads untrue stories about that person's past, skills, aptitude or anything else, with or without advance knowledge that these stories are not true, causing material damage to that person in this way (art. 198). Compensation for a loss or damage implies both the claimant's right to compensation for normal damage and compensation for the loss of profit or gain (art. 189).

377. Compensation for non-material damage may be awarded for the physical pain and suffering inflicted, for psychological trauma and mental pain, diminished capacity to earn a living, ugly scarring and crippling, violation of reputation, honour, human rights and freedoms, death of a next of kin or ordeal endured (arts. 199–205). Independently of compensation for material damage or the lack of it, the court will determine compensation for non-material damage in proportion to the intensity of the inflicted pain, suffering and fear (art. 200). Fair and adequate compensation will also be awarded to a person who has been tricked or coerced to perform punishable sex acts through misuse of a position of superiority or custodianship by another person and to a person claiming it for violation of the dignity of his/her person or morals. If the claimant so requests, the court may also award compensation for a future material loss, judging that it is likely to continue in the future (art. 203).

Article 15

378. As already mentioned herein, the CPC contains a provision of principle prohibiting and making punishable any violence against a person subjected to any form of arrest or restriction on his/her freedom, and obtaining from the accused or any other person a confession or information (art. 12).

379. The CPC prohibits further the use of force, threat, deception, promise, extortion, exhaustion or any other similar means to obtain from the accused or another person information or a confession that may be invoked as evidence against him/her. A court may not decide on information or confession obtained in this way, in contravention of the above provision (art. 89).

380. The CPC prohibits the use of force, threat, deception, promise, extortion, exhaustion, medical intervention or means affecting the mind and willpower of the accused when making a statement, or any other similar means in order to obtain from him/her information, a confession or evidence that may be given in evidence against him/her (art. 131).

381. At this point, references should be made to the aforementioned provisions of the FRY Constitution, Charter of Human Rights, CPC and the Penal Code of the FRY relating to extraction of information or evidence. Prohibition against extraction of information or evidence from accused persons, witnesses, expert witnesses or other persons and the inadmissibility of such information or evidence are regulated both in the CPC (art. 89) and in the Penal Code of the Republic of Serbia (art. 65).

382. Extracted information or evidence, however, in accordance with the general principles of domestic criminal legislation, may only be the grounds for the person from which such information or evidence has been obtained to bring legal action against the person acting in an official capacity who has obtained such information or evidence.

Article 16

383. By approving the Convention, the States parties have undertaken to prevent in any territory under their jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 of the Convention apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

384. As a State party, the FRY/S&M has also undertaken not to enact laws or other legal regulations, of a general or specific nature, which tolerate any acts amounting to torture in violation of the obligations under the Convention. This is all the more true as under the Constitutional Charter, ratified international treaties and generally accepted principles of international law have primacy over the law of the State Union of Serbia and Montenegro and over the law of its member States.

385. More importantly, cruel, inhuman or degrading treatment or punishment, overt or covert, would be incompatible not only with the Constitutional Charter, the Charter of Human Rights, the Constitution of Serbia and applicable laws, but also with the basic premises and the spirit of the domestic legislation and legal system.

386. While the laws in force do not recognize the term " torture", which is an objection concerning full implementation of the Convention in the legislation of S&M, protection against torture or other cruel, inhuman or degrading treatment or punishment, as referred to earlier in this report, is established and adequately regulated in a number of applicable legal regulations. The legislator, aware of acts of torture, recognizes the need for protection against such acts and is willing to carry out this protection adequately and independently of the formal definition of acts contained in the existing legislation or being introduced by various amendments thereto.

387. With a view to preventing all forms of torture or other cruel, inhuman or degrading treatment or punishment, the competent authorities of the Republic of Serbia have taken a number of other steps. This includes, as already referred to, the establishment of a Department of Public Security in the MUP RS, mandated, inter alia, to investigate any possible acts of torture committed by MUP RS law enforcement personnel and to make decisions on the information collected. In addition, the MUP RS effectively cooperates with the judicial authorities in the investigation of cases of torture, if any, and with a view to speeding up proceedings instituted before courts in this connection.

388. Torture as a notion is mainly associated with police, but in a broader context acts of torture and other cruel, inhuman or degrading treatment may also be committed by other public officials or personnel in penitentiary institutions, in health-care establishments where persons on which a measure of compulsory medical treatment has been imposed are placed, in psychiatric institutions, social rehabilitation institutions, or in facilities for the unattended or for helpless elderly people, etc. Routine and permanent supervision of these establishments ensures that their staff acting in official capacity treat the persons placed in their care properly and lawfully.

389. In recent times, public awareness has been raised of torture cases, particularly among the persons who may be in a situation to commit an act of torture. Therefore, as mentioned earlier in the report, particular attention has been devoted to the training of the relevant personnel, both short- and long-term: short-term through specialized courses and seminars and long-term through modifications to the education programmes in secondary and post-secondary level schools for such personnel. All the training activities are aimed at

disseminating information on a range of human rights available with emphasis on torture, international instruments and the domestic legislation containing human rights safeguards. Significant cooperation has been maintained in this field not only with international governmental organizations, primarily with the bodies of the United Nations, the Council of Europe, OSCE, and the European Union, but also with non-governmental organizations whose activities are mainly or entirely related to protection from torture.

390. The practices of the competent authorities (courts, administrative bodies and police) over the years have shown that torture-related acts are not common in the current system and treatment of individuals by the judicial, administrative and police authorities of the FRY/S&M. However, sporadic incidents of misuse of powers cannot be denied. When such incidents do occur, appropriate measures or action under the relevant legal regulations and acts are taken against persons acting in an official capacity in these authorities. In sum, the primary aim is to raise the awareness of the general public and draw their attention to torture or other cruel, inhuman or degrading treatment or punishment and to the need for ensuring protection against such acts or treatment or punishment. Otherwise, acts of torture and other cruel, inhuman or degrading treatment or punishment will be brushed under the carpet. This is a long-term process, but the progress already made has been significant.

III. Republic of Montenegro

391. The general legal framework which, in the Republic of Montenegro, allows protection against torture, inhuman and degrading treatment and punishment, is defined by the Constitution of the Republic of Montenegro (*Official Gazette of the Republic of Montenegro*, No. 48/1992) and Constitutional Charter of the State Union of Serbia and Montenegro (*Official Gazette of Serbia and Montenegro*, No. 1/2003), which includes the Charter on Human Rights (*Official Gazette of Serbia and Montenegro*, No. 6/2003). The latter two documents have been consistently referred to in the section on the Republic of Serbia as "the Constitutional Charter" and "the Charter on Human Rights", and will be referred to as such in this section.

392. The Constitution of Montenegro by its article 20, guarantees the inviolability of the physical and psychological integrity of the person, and his/her privacy. Also, according to the Constitution, article 24, respecting of the personality and dignity is guaranteed in criminal and any other proceedings, in the case of depriving or limiting of freedom and during the execution of sentence. It is forbidden and punishable to commit an act of violence against persons deprived of freedom, more exactly with limited freedom, likewise to extract confessions and statements. Nobody can be subject to torture, degrading punishment and treatment. It is forbidden to perform medical and other experiments on the person without his/her previous permission.

393. The Constitutional Charter, in spite of the fact that it defines immediate application of international agreements on human and minority rights and civil freedoms which are valid for the territory of Serbia and Montenegro (art. 10), establishes the subordination of ratified international agreements and generally accepted regulations of international law over the internal law of Serbia and Montenegro. Besides this, article 1 of the Charter on Human Rights establishes a person's dignity as inviolable and that an obligation of all is to protect the human dignity, likewise right to free development of own personality, under the condition that it does not mean the violation of rights of others as recognized by this Charter. According to the same Charter, article 12, the right to the inviolability of the physical and psychological integrity is guaranteed. No one can be subject to torture, inhuman or degrading treatment or punishment or can be the subject of medical or scientific experiments without his/her free given assent.

394. With such normative regulation of this subject issue, with court and administrative measures mentioned below undertaken within the field of protection against torture, inhuman or degrading conduct and punishments, it is necessary to stress the lack of adequate records, which would make possible the complete picture on the application of this universal ban, because only under the condition of the existence of appropriate records harmonized according to the standards is it possible to have suitable analysis, to notice the problem and to define further systematic work aiming at the harmonization of practice with normative institutions and with standards of institutions which harmonize integration processes on global and regional levels.

Articles 1 and 2

Legal measures

Criminal legislation

395. Until adoption of the Criminal Law of the Republic of Montenegro (adopted on the Session of the Assembly of the Republic of Montenegro dated 17 December 2003, published in the *Official Gazette of the Republic of Montenegro*, No. 70/3 dated 25 December 2003, and implemented after 2 April 2004) the law in force in the Republic of Montenegro was Criminal Law of the Federal Republic of Yugoslavia (*Official Gazette of the Federal Republic of Yugoslavia*, No. 44/76, 36/77, 34/84, 37/84, 74/87, 57/89, 3/90, 45/90 and 54/90 and *Official Gazette of the Federal Republic of Yugoslavia*, No. 35/92, 16/93 and 24/94) and the Criminal Law of the Republic of Montenegro (No. 42/93, 14/94, 27/94 and 30/02).

396. In most of these criminal offences, the action which constitutes the criminal offence (for example, attack etc.) bans conduct which might result in torture or other forms of cruel or inhuman conduct. The level of severity of such treatment is determined by the level of suffering which the victim goes through and might constitute a criminal offence, but also aggravating circumstances directly influence the Court in deciding on type and level of punishment.

Criminal Law of the Federal Republic of Yugoslavia

397. According to the Criminal Law of the Federal Republic of Yugoslavia (CL FRY), the following issues are established:

- Criminal offence and criminal liability;
- Penalties;
- Suspended sentences and court reminders;
- Security measures;
- General rules on corrective measures and the punishment of minors;
- Legal consequences of sentences;
- Rehabilitation, cancellation of sentences and conditions for giving data from the record of prior convictions;
- Prescriptions;
- Amnesty and abolition;
- Validity of the Yugoslav Criminal Legislation relating to the place of the committing of the criminal offence;

- Validity of the Republic and province criminal legislation relating to the place of the committing of the criminal offence;
- Meaning of expressions in this law;
- Criminal offences against the constitutional order and security of the FRY;
- Criminal offences against humaneness and international law;
- Criminal offences against the reputation of FRY, a foreign State or an international organization;
- Criminal offences against the unity of the Yugoslav market;
- Criminal offences against official persons in federal institutions or federal organizations;
- Criminal offences against the security of air traffic;
- Criminal offences against other social values;
- Agreement and association in order to commit criminal offences of federal law.

398. The banning of torture in this law is contained in the following regulations.

399. From the group of Criminal Offences against Constitutional Order and Security (chap. 15, arts. 114–139) in article 139, paragraph 1, Punishment for the most severe criminal charges:

- Article 114 — Criminal offence — Attack on Constitutional Order;
- Article 116 — Criminal offence — Menace to the Territorial Entirety;
- Article 120 — Criminal offence — Undermining of Military and Defence Powers;
- Article 124 — Criminal offence — Armed Insurrection;
- Article 125 — Criminal offence — Terrorism;
- Article 126 — Criminal offence — Diversion;
- Article 127 — Criminal offence — Sabotage, when criminal offence is accompanied with severe violence, including torture;
- Criminal offences against election rights;
- Criminal offences against labour relationships;
- Criminal offences against honour and reputation;
- Criminal offences against dignity of person and morals;
- Criminal offences against marriage and family;
- Criminal offences against the health of people and the environment;
- Criminal offences against the economy;
- Criminal offences against property;
- Criminal offences against the general security of people and property;
- Criminal offences against public transportation;
- Criminal offences against the judiciary;
- Criminal offences against public order and legal traffic;
- Criminal offences against official services;

- Criminal offences of corruption;
- This law also bans torture, or any other forms of cruel or inhuman conduct, as contained in forthcoming regulations.

400. The group of criminal offences against life and body (chap. 5, arts. 30–42), includes:

- Article 30, paragraphs 2t and 7: criminal offence of assassination (especially "when committed in a cruel way");
- Article 34, paragraph 4: criminal offence of leading a person to suicide and assisting in suicide, or cruel and inhuman acts towards a person who is in a subordinate or dependant position towards the perpetrator and thus involuntarily provokes a suicide. Based upon paragraph 5, the attempting of this criminal offence is also punishable;
- Article 36 — Criminal offence — Severe bodily injury.

401. From the group of criminal offences against human freedoms and rights of citizens (chap. 6, arts. 43–59):

- Article 48 – criminal offence of mistreatment in service ("Who while performing his/her duties mistreats, insults or generally acts in a way which offends human dignity"). For this criminal offence is prescribed the punishment of from three months up to three years of imprisonment, and criminal prosecution is performed by State Prosecutor ex officio.

402. According to amendments and supplements of this Law from 2002 (*Official Gazette of the Republic of Montenegro*, No. 30/02), capital punishment is cancelled from the Criminal Legislation of Montenegro. This is understood as time of cancellation of capital punishment in the Republic of Montenegro.

Criminal Code of the Republic of Montenegro

403. The Criminal legislation of the Republic of Montenegro bans torture and other forms of cruel, inhuman and degrading punishment or actions in the following regulations.

404. Within the group of criminal offences against life and body (chap. 14, arts. 143–157):

- Article 144, paragraph 1 – Serious assassination;
- Article 149, paragraph 5 – Criminal offence. Leading somebody on to suicide and assisting in that suicide, by cruel and inhuman actions towards that person who is in a subordinated or dependent position in relation to the perpetuator and owing to such actions he/she commits or attempts to commit suicide, which can be attributed to the negligence of the perpetuator.

405. The most comprehensive protection against prohibited actions is prescribed in the following group of criminal acts against humans' and citizens' freedoms and rights (chap. 15, art. 158/183):

- Article 167 — Criminal offence — Mistreatment and Torture. According to paragraph 2, anyone who causes grave suffering to another person with the aim of getting information or a confession, or to frighten that individual or, a third person, or to exert pressure upon him or does this with another motive based on any form of discrimination, will be punished with up to three years of imprisonment. If this criminal offence is committed by an official person in the performance of his/her duty, he/she will be punished by imprisonment from one to five years (para. 3).

406. The group of criminal offences against humaneness and other welfares protected by the international law (chap. 35, arts. 426–449) in:

- Article 426 — Criminal offence — Genocide;
- Article 427 — Criminal offence — Crime against humaneness;
- Article 428 – War crimes against civil population;
- Article 429 – War crimes against wounded or sick persons;
- Article 430 – War crimes against prisoners of war;
- Article 431 — Criminal offence — Organizing and inducing someone to commit genocide and war crimes.

407. Within the sanctions proscribed by this Law, capital punishment is not foreseen.

Law on Criminal Proceedings

408. The Law on Criminal Proceedings (*Official Gazette of the SFRY*, No. 4/77, 14/85, 74/87, 57/89 and 30/90, and *Official Gazette of the FRY*, No. 27/92 and 24/94), which entered into force with the application of the Law on Criminal Proceedings of the Republic of Montenegro, does not contain regulations which deny legal force to evidence obtained by torture. This Law does not contain the necessary legal prerequisites to provide prevention from torture.

Law on Criminal Proceedings (Republic of Montenegro)

409. The Law on Criminal Proceedings (*Official Gazette of the Republic of Montenegro*, No. 72/03 dated 23 December 2003) has been adopted, but its application was postponed for a period of three months, thus it entered into force in April 2004. Besides the above-mentioned laws which define the material part of Criminal Legislation, the Law on Criminal Proceedings underlines the intention to protect the rights of defendants by applying legal norms which allow proving of the criminal offence and pronouncing of appropriate sentence. For such reasons, the Law contains norms which prohibit torture and render it senseless because of the provision which voids confessions and evidence obtained by torture. By these regulations, in accordance with the article 15 of the Convention, the following actions are prohibited or punishable: violence against persons deprived of freedom or persons with limited freedom, likewise obtaining by insidious means a confession or any other statement from a defendant or other person who participates in the trial (art. 12, para. 1). The Court decisions cannot be based upon confessions or any other statement acquired by torture or inhuman treatment (art. 12, para. 2). This provision also applies to witnesses and court experts and is concretized by separate provision which especially underlines that Court decisions cannot be based upon confessions acquired by torture or any other form of mistreatment (art. 98), bearing in mind the fact that other forms of mistreatment also mean the use of force towards suspects, defendants or witnesses, medical intervention or giving devices which may influence their awareness and will during testimony (art. 134, para. 4).

Law on Internal Affairs

410. The current Law on Internal Affairs was adopted in 1994 (*Official Gazette of the Republic of Montenegro*, No. 24/94). Internal affairs, according to the regulations of this Law, are affairs establishing the security of the Republic, the security of citizens, the protection of freedoms and human rights and the rights of the citizen according to the Constitution. These affairs are carried out in such a way that each person and citizen enjoys the same protection and constitutional rights and freedoms are guaranteed (art. 2).

411. Authorized official persons can use force, according to the regulations of article 17 of the Law on Internal Affairs, only if it is necessary:

(a) To prevent a person who is deprived of freedom or found while committing a criminal offence that is prosecuted ex officio from escaping;

(b) To subdue the resistance of persons who violate public law and order or who need to be deprived of freedom according to the Law; and

(c) To repulse an attack on themselves, another person or facility which they secure.

412. Means of coercion under paragraph 1 of this article include: physical force, sticks, waterguns, devices for coercive blocking of vehicles, specially trained dogs, chemical devices, firearms and other means of coercion prescribed by the Law.

413. Chemical devices from paragraph 2 of this article are the short-term use of tear gas, which afterwards does not have any effect on psychophysical and general health condition.

414. Before using any of these devices, the authorized official person is obliged to warn the persons against whom these devices are going to be used. The authorized official person is not obliged to act according to paragraph 4 of this article if this could endanger the carrying out of an official duty.

415. In the performance of official duty (art. 18) an authorized official person can use firearms only if by using corrective devices or by other way, he/she is not able to:

(a) Protect human lives;

(b) Prevent the escape of a person found while committing a criminal offence, attacking constitutional order, endangering territorial integrity, undermining military and defensive powers, committing acts of violence towards representatives of the highest State official, armed insurrection, violation of territorial integrity, skyjacking, endangering flight security, murder, rape, severe robbery, armed robbery, severe cases of armed robbery and robbery;

(c) Prevent the escape of a person found while committing a criminal offence prosecuted ex officio if there are basic suspicions that he/she possesses firearms and will use them;

(d) Prevent the escape of a person who has been deprived of freedom for committing criminal offences from points 2 and 3 of this paragraph;

(e) Counter direct aggression against himself/herself which directly endangers his/her life;

(f) Counter aggression against a facility or person he/she protects.

416. An authorized official person (art. 19) may use firearms only if by using physical force, stick or other corrective devices he/she is not able to carry out his/her official duties.

417. Before using firearms, the authorized official person is obliged to warn the citizens by shouting, given that under the circumstances this is possible.

418. While using firearms, the authorized official person is obliged to protect the lives of other persons.

419. If the Minister considers that coercion devices have been used illegally, he is obliged, within three days, to take measures for establishing the responsibility of the authorized official person who used them, or ordered the use of corrective devices (art. 21).

420. In 2000, police officers used corrective devices in 53 cases (physical force in 37 cases, official stick in 12 cases and physical force and stick in 4 cases), out of which in 47 cases the use of force deemed justified and in 6 cases the use of force deemed unjustified.

421. In 2001, corrective devices were used in 36 cases, out of which in 30 cases their use deemed justified and in 6 cases unjustified.

422. In 2002, corrective devices were used in 48 cases (physical force in 34 cases, physical force and official stick in 6 cases, official stick in 6 cases and firearms in 2 cases), out of which in 43 cases their use deemed justified and in 5 cases unjustified (physical force in 2 cases, official stick in 1 case and use of firearms in 2 cases).

423. In 2003, corrective devices were used in 59 cases (physical force in 44 cases, physical force and official stick in 5 cases, official stick in 7 cases and firearms in 3 cases), out of which in 54 cases their use deemed justified and in 5 cases unjustified (physical force in 3 cases, stick in 2 cases).

424. Against the officers who exceeded their legal authorization by using corrective devices, appropriate legal measures were implemented.

Law on Application of Criminal Sanctions

425. This Law dates from 1994 (*Official Gazette of the Republic of Montenegro*, No. 25/94). According to article 15 of the Law, actions towards convicted persons that do not respect his/her personal dignity and the maintenance of his/her physical and mental health are proscribed. Measures are taken to the highest possible level to consider personality of each convicted person and to achieve the best results in bringing about resocialization.

426. Corrective devices can be used on convicted persons only under the conditions and way prescribed by this Law and the regulations based upon it. The same Law, in article 61, proscribes the use of corrective devices, namely: physical force, tying, rubber stick, water hoses, specially trained dogs, chemical devices and firearms, in such a way that Law prescribes that these devices can be used only when necessary, in order to prevent the escape of a convicted person, a physical attack on an official or convicted person, injury of other person, self-injury or damage, likewise when this is necessary in order to prevent resistance towards legal order or an official person.

427. The use of the most severe coercive device, firearms, is regulated by article 180 of the same Law. According to this regulation, an authorized official person is allowed to use firearms only if by using other coercive devices he/she cannot perform his/her official duties and only if he/she cannot perform them in any other way. Such circumstances include:

(a) Countering acts of aggression which endanger his/her life or the life of another person;

(b) Countering acts of aggression on the facility which he/she secures;

(c) Preventing the escape of a convicted person who serves a sentence of imprisonment in the open or semi-open section;

(d) Preventing the escape of a convicted person whom he/she escorts or guards, only if this person has been sentenced for a criminal offence with a minimal punishment of 10 or more years.

428. During their preparation for performance of their duties, authorized official persons go through special training intended to qualify them in the use of firearms and other coercive devices. Regarding firearms, officers involved in external security can be equipped

with shotguns, and also during escort duty, guns which they cannot carry among convicted persons serving prison sentences in closed quarters.

429. A report is always made on the usage of corrective devices in cases of alleged exceeding of their authorized use, which within three days must be delivered to the Minister of Justice.

430. Regulations on using of other corrective devices are prescribed by the Rule Book on the performance of security measures, and the arms and equipment of security officers (*Official Gazette of the Republic of Montenegro*, No. 6/97). Use of corrective devices is limited by the need for their application, which is prescribed by article 55, which requires the official person to stop their application when the immediate reason for it ceases to exist.

431. Physical force or rubber stick may be used against convicted or arrested persons in order: to subdue their resistance, prevent escape, check physical aggression against an officer or other person, prevent the injury of another person, self-injury and material damage.

432. Resistance can be active or passive:

(a) Active resistance is when a convicted or arrested person offers resistance by using firearms, tools or other objects or physical force and thus prevents an official person from performing official actions. Goading somebody into resisting is considered as an active resistance;

(b) Passive resistance is when an arrested person does not fulfil the legal order of an authorized official person or puts himself/herself in such a position which disables the authorized official person from performing official actions. If the convicted person offers resistance, a rubber stick can be used if there are no other options to overcome such resistance or if the use of other, more mild devices prove ineffective.

433. Regarding the use of rubber sticks, authorized official persons are instructed to avoid blows onto head and other sensitive parts of body. Rubber sticks cannot be used with:

(a) A person who is obviously sick, old, exhausted or severely disabled;

(b) Women who are obviously pregnant, except if they endanger the life of an official person or if it is not possible to subdue them in some other way and thus establish order and peace.

434. Binding normally consists of the wearing of handcuffs during escorting. It must be ordered in writing by the Authorized Officer of the Security Service. It can be done without a written order if there is suspicion that a convicted person can escape and upon escape, may attempt to attack an authorized official person or other persons, or if the convicted person attempts suicide or self-injury. Within institutions for imprisonment, handcuffs can be used when there is no other way to overcome the resistance of a person, when he/she commits a physical attack on other arrested or sentenced persons or authorized persons, or when he/she commits self-injury or causes material damage.

435. Specially trained dogs can be used for:

(a) Finding escaped persons;

(b) Preventing escape;

(c) Guarding institutions;

(d) Preventing resistance and checking aggression on authorized official persons, other persons or guarded facilities.

436. Water hoses and chemical devices, upon order by the Director, can be used when a group of sentenced or imprisoned persons offers resistance, considerably disturb the order of the peace, or barricades.

Disciplinary liability of convicted persons

437. Because of the violation of regulations of household habits, pursuant to article 19, paragraph 3 of the Law, upon the order of the Director of the institution, convicted persons can be punished by the following disciplinary actions:

(a) Reprimand;

(b) A ban on receiving up to three parcels;

(c) Solitary confinement for up to 30 days upon fulfilling their term of obligation;

(d) Solitary confinement for up to 30 days.

438. Regarding disciplinary penalties (b), (c) and (d), their execution can be conditionally suspended for a three-month period. Conditional suspension can be cancelled if within the three-month period, the convict is again subject to disciplinary penalty (art. 55).

439. Upon the pronouncement of a disciplinary penalty, the convicted person will be heard, his/her defence will be checked, a report on his/her previous work/conduct will be obtained as will, if necessary, a medical expert's opinion. The disciplinary penalty is pronounced according to the decision, against which a convicted person can lodge a complaint to the next senior officer. The decision on punishment will be made public on a bulletin board (art. 56).

440. The disciplinary measure of sending a convicted person into solitary confinement consists of moving the convicted person to a separate cell, with a daily walk in the open air lasting at least one hour. While serving the disciplinary penalty, the convicted person at least once a day receives visits from a doctor and a tutor who is charged with working with him/her. The disciplinary penalty of solitary confinement cannot be executed if it puts the health of the convicted person at risk (art. 57) and can be interrupted if the scope of disciplinary punishment has already been achieved or due to sickness on the part of the convicted person (art. 58).

441. The special disciplinary measure of isolation can be undertaken towards a convicted person if previous disciplinary penalties have obtained no results and if he/she still persistently disturbs the work and life within the institution and for such reasons represents a serious danger to other convicted persons and security. This measure must be decided by the Head of the institution. The measure of isolation can be interrupted if the doctor concludes that its further execution would prove harmful to the physical and mental health of the convicted person or if the reasons for the disciplinary action cease to exist.

442. According to this Law, based upon article 5, the possibility of procedure in contentious administrative matters against separation according to which, based upon regulations of this Law are regulated rights and obligations of persons under sanctions.

Law on Amendments and Supplements to the Law on the Execution of Criminal Sanctions

443. This Law was adopted on 17 December 2003 (*Official Gazette of the Republic of Montenegro*, No. 69/03). Based upon it is amended article 5 of the Law on Execution of Criminal Sanctions, which states that persons under sanctions have the right to effective remedy before the Court against separate acts, based upon which, according to regulations of the Law and Amendments and Supplements to the Law on Execution of Criminal

Sanctions, are decided his/her rights and obligations. According to the Section of Accessibility to the Court regarding other rights, the convicted persons have the same rights as other citizens.

Disciplinary liability of officers

444. According to chapter 5 of the regulations of the Law on Government Employees (*Official Gazette of the Republic of Montenegro*, No. 45/91), on the liability of officers (arts. 33–43), it is proscribed that the officer can be held personally responsible for performing the duties entrusted to him/her. Officers are responsible for the violation of official duty and can be disciplined. This kind of responsibility exists if an officer violates his/her official duty in such a way that criminal or any other form of liability does not exclude the disciplinary liability if the committed act entails a disciplinary offence. For violations of official duty, officers are subject to one of the next disciplinary measures:

(a) Public reprimand;

(b) Fine amounting to 10 per cent to 50 per cent of salary earned in the month in which fine is pronounced;

(c) Retention from promotion for a two-year period, or dismissal.

445. Among other things, disciplinary offences can entail:

(a) Non- or poor execution, or tardy or negligent execution, of official duties;

(b) Abuse of an official position or exceeding of official authority;

(c) Actions which disturb citizens, legal persons and other parties in accomplishing their rights and interests at the proceedings at the governmental agencies;

(d) Not undertaking, or unsatisfactory undertaking, of prescribed measures in order to ensure security to entrusted objects or persons.

Protection of rights of persons who are serving sentences

446. The protection of the rights of convicted persons is based upon the same chapter of the Law on Amendments and Supplements in the Law on the Execution of Criminal Sanctions (art. 64a to art. 28). Based on these regulations, convicted persons, during the serving of a sentence, are entitled to court protection from the Chief's (Director's) acts in the institution in which he/she serves a sentence, if by such acts limit some of his/her rights recognized by the Law. This protection is accomplished in the purview of the competence of the Administrative Courts and pertains only to specific rights owing to prison conditions and allowing of their enjoyment, regulated by the Special Law (*Lex Specialis*) – on the Execution of Criminal Sanctions (the right to health care, to receive correspondence, visits, parcels, the right to marital life, to religious life, rights based upon work of convicted persons, the right to be informed, and the right to legal assistance). These regulations were adopted by the end of 2003. Until the writing of this report, there had been no court proceedings, based upon above-mentioned regulations.

447. Regarding some of these generally recognized rights enjoyed by free citizens, convicted persons achieve the protection of rights before the court, in proceedings which are accessible to other citizens.

Court measures

448. Court measures undertaken in criminal proceedings are shown below, based on data received from the Superior Court of the Republic of Montenegro (Report Su.V. No. 1/04 dated 24 February 2004).

1994

449. One official person was sentenced by conditional sentence for the criminal offence of mistreatment while performing duties under article 48 of the Criminal Code of the Republic of Montenegro.

1996

450. Two persons were conditionally sentenced, namely: one for the criminal offence of mistreatment in the performance of official duty under article 48 in connection with the criminal offence of light bodily injury from article 37, paragraph 2, of the Criminal Code of the Republic of Montenegro.

1997

451. One official person received the conditional sentence for the criminal act of causing serious bodily injury, in connection with the criminal offence of mistreatment in the performance of official duty under article 48 of the Criminal Code of the Republic of Montenegro.

452. One official person received the sentence of 12 years' imprisonment for the criminal offence of murder under article 39, paragraph 1, concerning the criminal offence of mistreatment while performing official duties under article 48 of the Criminal Code of the Republic of Montenegro, one person received the sentence of 10 years' imprisonment, and another person a sentence of 8 years' imprisonment.

1999

453. Three members of the KPD (House of Correction) Security Guard, after catching an escaped convicted person, used excessive and inappropriate force against the sentenced person.

454. Accordingly, criminal proceedings were conducted against them. All three were irrevocably sentenced for the criminal offence of mistreatment while performing official duties under article 48 of the Criminal Code of the Republic of Montenegro. They received the following sentences: eight months of imprisonment for two of them, and for a third, six months of imprisonment.

455. Because of this, a disciplinary measure was pronounced, resulting in the cessation of their employment at the House of Correction.

456. Three persons received conditional sentences for the criminal offence of mistreatment while performing official duties under article 48 of the Criminal Code of the Republic of Montenegro, and one was sentenced to two months' imprisonment.

2000

457. For the criminal offence of the loan of anything but money under article 219 of the Criminal Code of the Republic of Montenegro, coupled with the criminal offence of mistreatment while performing official duties under article 48 of the Criminal Code of the Republic of Montenegro, one person was sentenced to two months' imprisonment and another was conditionally sentenced.

458. For the criminal offence of mistreatment while performing official duties under article 48 of the Criminal Code of the Republic of Montenegro, one person was sentenced to a conditional sentence.

459. In addition, the Basic Court in Pljevlja conducted proceedings for the criminal offences of mistreatment while performing official duties under article 48 of the Criminal

Code of the Republic of Montenegro against four persons, who received the following sentences: three months' imprisonment (one person), 45 days' imprisonment (one person), and conditional sentences (two persons). In two cases against five persons proceedings were in progress.

460. According to data obtained from the Superior State Prosecutor (Document Ktr. No. 21/04 dated 1 March 2004), for criminal offences resulting from article 1 of the Convention, in the period from 1 January 1993 to 31 December 2003, criminal charges were brought against 307 persons, prosecutors with jurisdiction ratione loci and jurisdiction which was individually and particularly conferred:

(a) After the evidence necessary for the decision was examined, the court rejected the allegations against 139 persons;

(b) Regarding 69 persons, they submitted an application for further investigation. The investigation of six persons was suspended;

(c) Regarding 74 persons, they submitted the proposal of indictment;

(d) Following investigation, criminal charges were brought against 63 persons;

(e) Proceeding upon prosecutors' acts, competent courts completed proceedings against 105 persons, with the following results:

(i) Indictments against 6 persons were rejected and 14 persons were acquitted;

(ii) Eighty-five persons were convicted, and after proceedings according to complaints were completed, sentences went into effect against 59 persons. Proceedings against 34 persons are in progress.

Administrative and other measures

Education of officers

461. Regarding the training of officers of the House of Correction, education on human rights and including on the prohibition of torture and the Convention, is a part of the continuing education of personnel. Education is performed within premises which are intended exclusively for education. For these needs, a centre for officer training with permanently employed officers has been established.

Disciplinary proceedings against officers

462. According to data obtained from the House of Correction (Document No. 05-466/1 dated 10 February 2004, which notes that due to the frequent moving of the archives, the House was not able to provide data before 1998), disciplinary proceedings were conducted against officers for cruel and inhuman punishment of convicted persons.

1999

463. In the Bijelo Polje prison, a guard placed two sentenced persons, without legal reasons for the serving of disciplinary punishment, into the cell for solitary confinement. Disciplinary proceedings were conducted and suspended because a guard retired.

2000

464. Two guards were disciplined by a fine amounting to 20 per cent of one month's salary because they used force against a sentenced person in an inappropriate way.

2002

465. Six guards were disciplined by fines amounting to 50 per cent of one month's salary because they used rubber sticks in an inappropriate way against a sentenced person.

2003

466. One guard was punished by a public warning because he used the rubber stick against a sentenced person without legal conditions.

Humiliating treatment of sentenced persons

1998

467. A security officer from the House of Correction (KPD), several times, without reason, returned his food to the sentenced person serving food in the officers' canteen with the explanation that the food was not salty enough. This was deemed as a disciplinary violation of this official person, and the officer in question received a fine amounting to 30 per cent of his monthly salary.

2001

468. The disciplinary punishment of a public warning was given to a female officer because she slapped a sentenced person who tried to prevent her from fighting with another officer. Another officer was punished by a fine amounting to 50 per cent of his monthly salary because he did not implement all prescribed measures in order to prevent fighting between two sentenced persons, although he was able to, and should have, done that.

Punishment of officers of the Ministry of the Interior

469. During the period from 1 January 2000 to 31 December 2003, the Ministry of the Interior of the Republic of Montenegro brought criminal charges against 75 officers.

470. Within the same period, owing to the serious violation of official duties under article 57 of the Law on Internal Affairs, disciplinary proceedings were initiated against 646 officers, including lesser violations of official duties under article 56 of the Law on Internal Affairs. Disciplinary proceedings were initiated against 3,579 officers.

471. We would like to mention that all cases initiated were regarding irregular use or the exceeding of authority regarding the use of compulsion devices.

Article 3 of the Convention

472. In situations where there were reasons to believe that a person could be exposed to torture if transported to another State, there was no prosecution, expulsion or extradition of persons to these third States. Due to conditions of war and the mass violation of human rights, several thousand refugees and displaced persons found refuge in Montenegro. A number of these persons, in cooperation with the competent international agencies, were returned to their States, but a number are still staying in Montenegro.

473. Pursuant to the regulation on Taking Care of Displaced Persons (*Official Gazette of the Republic of Montenegro*, No. 37/92), which is still in force, the Ministry of the Interior carries out the proceedings for recognizing the status of displaced persons. According to the records of the Ministry, 34,000 displaced persons (from former Republics of SFRY) are registered. However, this number is not realistic, considering the fact that displaced persons are obliged to report the change, which is the basis for establishing his/her rights.

474. UNHCR and the Commissariat for Displaced Persons performed a census of displaced persons, on which occasion 13,000 persons were registered. We would like to mention that the Ministry does not collect data on the ethnicity of those persons.

475. In the period from 1 June 2004 to 3 July 2004, a census of displaced persons, organized by the Ministry of the Interior, UNHCR and the Commissariat, was performed. However, taking into consideration the fact that the next phase is coming, namely proceeding according to revision, and after that the appeal of people unhappy with decisions, which may be disputed before the Superior Court of the Republic of Montenegro, we were not able to introduce the real situation or final data on displaced persons.

476. The Republic of Montenegro signed the Readmission Agreement with 14 European States. The Ministry established the status of citizens and identity of persons and entered into agreement for the handing over of such persons.

477. Pursuant to the Readmission Agreements, in the year 2003, the handover of 2,661 persons was agreed upon. Out of that number, according to data at our disposal, 672 persons were returned to Montenegro.

Article 4

478. A legal preamble for measures undertaken according to this regulation is given in the Comment regarding article 2 of the Convention.

479. Pursuant to article 134 of the Criminal Code of the Republic of Montenegro (CC), which will, regarding this report, be referenced hereinafter, this Law is applicable against anybody who commits a criminal offence in the territory of Montenegro. Consequently it is valid for domestic and foreign citizens. The Criminal Code also applies to any person who commits a criminal offence on domestic vessels, no matter the location of the ship during the committing of the criminal offence. It also applies to any person who commits a criminal offence on a domestic civil airplane while in flight or in any military airplane, no matter the location of the airplane during the committing of the criminal offence, if the offender is a citizen of Montenegro. The Criminal Code also applies to any citizen of Montenegro who commits a criminal offence abroad or is caught in Montenegro or extradited.

Articles 6 and 7

480. Pursuant to the Law on Criminal Proceedings (chap. VIII, arts. 136–153) the following are measures for the treatment of an accused person and the proper conduct of criminal proceedings:

(a) Court summons;

(b) Bringing to trial;

(c) Surveillance measures (prohibition to leave residence; visit certain places or areas; the obligation of the accused to periodically report to certain State officials; prohibition to meet with certain persons; temporary deprivation of driving licence);

(d) Guarantee;

(e) Imprisonment.

481. The competent court must observe the conditions defined for applying separate measures, taking care not to use severe measures if the same end can be achieved by less severe measures. These measures must be cancelled ex officio, when reasons for their

undertaking cease to exist, in other words, will be substituted by other, less severe punishment when conditions call for it.

482. Pursuant to the separate regulation of the Law on Criminal Proceedings (arts. 528 and 529 – these regulations are applied also after the applying of the Law on Criminal Proceedings, until adopting of the new Law, based upon which will be regulated the issues of international legal assistance and extradition) based upon a request from a competent international agency, in urgent cases, when there is a risk that a foreigner might escape or hide, the police are enabled to deprive an alien of freedom in order to escort him/her to the investigating judge. The investigating judge immediately starts investigation on established facts, and through the diplomatic service, informs the foreign State in question. Further proceedings depend on established evidence, from the point of view of competence of national agencies and likewise the request of the foreign State. When reasons for imprisonment cease to exist or when the foreign State does not request extradition within the term defined by the investigating judge, he/she will liberate the accused. This term cannot be longer than three months starting from the day of imprisonment. Upon request from the foreign State, a board of judges can prolong the term for another two months.

Articles 8 and 9

483. Regarding this basis, there were no requests for extradition.

Article 10

484. Education on human rights is a part of the education of prison guards and police. This training includes not only new officers but also those who are already employed within institutions. Regarding this issue, cooperation with international institutions (OSCE and others) has been established and the experience of foreign experts, who participate as consultants and educators, is used.

485. In cooperation with OSCE, the Ministry of the Interior organized the course for "Trainers in Police Training" at the International OSCE Educational Centre in Zemun (six weeks), while at Danilovgrad additional training sessions for policemen took place, titled "Program of Development of Montenegrin Police".

486. Representatives of the Ministry of the Interior were present at the following workshops:

(a) "Human Rights and Police", organized by UN/ICRC Center in Vienna (five days);

(b) "Police Ethics and Training Methods", organized by the Association of Police Colleges in Croatia (four days);

(c) "Methods of Training", organized by the Association of Police Colleges in Croatia (four days);

(d) "Human Rights as a Goal of Police Reform", organized by the Center for Democracy and Human Rights with support of the Danish Institute for Human Rights in Igalo-Herceg Novi.

487. The "Code of Police Ethics" is a part of the Law on Police, which is now in the procedure of adoption.

488. The curriculum for students of the Secondary School of Internal Affairs (2003/04), more exactly that for graduating students, has been updated to include the subject of

Criminal Processing Law, from the field "Human Rights and Police" (Semester I) and "Code and Professional Ethics" (Semester II).

Article 11

Police arrests

489. The Law on Internal Affairs (*Official Gazette of the Republic of Montenegro*, No. 24/94) regulates the issue of police arrests. In fact, pursuant to the regulation of article 15 of the Law, it is prescribed for an authorized person to bring into official premises or deprive of freedom a person who disturbs public law and order or endangers traffic security, or if public law and order or traffic security cannot be established in another way.

490. The deprivation of freedom, according to paragraph 1 of this article, cannot last longer than 12 hours.

491. Exceptionally, deprivation of freedom can also last up to 24 hours, in the following circumstances:

492. If it is necessary to establish the identity of the person and this cannot be established without a deprivation of freedom;

493. If the person is being extradited by a foreign authority in order to be sent to a competent authority;

494. If he/she endangers another person with a serious threat that he/she will attack his/her life or body.

495. Authorized official persons from the Ministry are obliged to promptly inform the person deprived of freedom about the reasons he/she has been deprived of freedom. As per paragraph 1 of this article, a person can request that he/she may inform members of his/her family without delay.

496. During the deprivation of freedom, an official interview will be made with the person deprived of freedom about the circumstances and reasons he/she is being detained in order to verify if the person, in regard to paragraphs 2 and 3 of this article, is entitled to compensation for damages.

497. According to article 16, it is prescribed that deprivation of freedom be determined by a decision, which contains: data on the person deprived of freedom, the duration of the deprivation of freedom, the beginning and basis for the deprivation of freedom and precept on the right to appeal.

498. The decision on the deprivation of freedom is made by the Chief of the Organizational Unit.

499. The decision on the deprivation of freedom will be delivered to the person deprived of freedom within three years of the deprivation.

500. Regarding the decision on the deprivation of freedom in the cases from article 15, paragraph 1, a person deprived of freedom can make an appeal to the Minister within six hours, and can appeal the decision depriving him/her of freedom in cases from article 15, paragraph 3, of this Law within 12 hours after the delivery of the decision.

501. An appeal of the decision depriving a person of freedom does not stop its carrying out.

502. The Minister is obliged to decide upon the appeal of the person deprived of freedom within six hours from receiving the decision, in the cases from article 15, paragraph 3, point 1, and within 12 hours, in cases from article 15, paragraph 3, point 3.

503. If the decision brings about further appeals, procedure in contentious administrative matters cannot be conducted.

504. The Law on Criminal Proceedings of the Republic of Montenegro, which has been in effect since 2 April 2004, also contains new solutions concerning treatment of persons who have been arrested and are temporarily in jail, for any reason, in accordance with the application of article 11 of the Convention.

505. Authorized police officers can deprive of freedom any person, if there is a reason anticipated by the Law on Criminal Proceedings for determining the temporary arrest, but they are obliged to escort the person, without delay, to the investigating judge. The authorized police officer will inform the investigating judge of the reasons for as well as the time period of the deprivation of freedom.

506. Persons deprived of freedom must be immediately informed, in his/her mother tongue, of the reasons for his/her deprivation of freedom and also must be told that he/she is not obliged to declare anything, is entitled to a defence attorney according to his/her preference and may request that his/her family be informed regarding his/her deprivation of freedom.

507. If the escorting of the person deprived of freedom lasts longer than eight hours, the authorized police officer is obliged to explain this delay to the investigating judge, upon which, the investigating judge will take notes, in other words, record.

508. Police officials can exceptionally detain a person, in order to collect information or evidence, a maximum of 48 hours upon depriving him/her of freedom, more exactly responding to summons. A maximum of two hours later police must present in a written decision to the retained person and the defence attorney. In the decision must be mentioned the criminal offence for which the accused is charged, the day and the hour of the deprivation of freedom, and likewise the time when the detention began.

509. The suspected person or his defence attorney is entitled to the right to lodge a complaint, which together with documents of the case will be immediately delivered to the investigating judge. The investigating judge is obliged to decide on the complaint within four hours of receiving the complaint. The complaint does not stop the carrying out of the decision.

510. The police are obliged to inform the investigating judge of the deprivation of freedom, who can request the police that they immediately escort the detained person to him/her. If within 48 hours the police do not announce the arrest and escort the detained person to the investigating judge, they are obliged to free the detained person. The same person cannot be detained again for the same criminal offence.

511. As soon as the police bring in the decision for detention, the suspected person must have his/her defence attorney. If the accused person does not choose his/her own defence attorney, police will do it ex officio, according to the sequence, from the list provided by appropriate Bar.

512. On the basis of an analysis of the long-term practical work of the Ministry of the Interior, it was concluded that torture has not existed, but there was evidence of only some cases of the exceeding of authority. In these cases against authorized officers, appropriate legal measures were undertaken, whether criminal or disciplinary.

513. During 2002, the Ministry deprived of freedom or detained 5,549 persons:

(a) 3,437 persons for criminal offences, central wanted circulars, and traffic;

(b) 1,627 persons for disturbing public law and order or violating the Law on Arms;

(c) 311 persons for non-reporting of stay;

(d) 174 persons for violations of the border regime.

514. During the year 2003, 6,340 persons were deprived of freedom or detained of these:

(a) 127 persons for criminal offences, central wanted circulars, and traffic;

(b) 1,580 persons for disturbing public law and order or violating the Law on Arms;

(c) 377 persons for non-reporting of stay;

(d) 256 persons for violations of the border regime.

Supervision

515. The supervision of actions towards temporary arrested persons, based upon decision of Competent Court, is performed by the President of the Court in accordance with article 158 of the Law on Criminal Proceedings. The institutions for executing temporary arrests are independent from the police. This involves independent State officials, together with the State institutions responsible for executing the punishment of jail.

516. The supervision of punishment by imprisonment, based upon article 21 of the Law on Execution of Criminal Sanctions and article 174b of the Law on Amendments and Supplements of the Law on Executing of Criminal Sanctions (ZIKS), is the responsibility of the Ministry of Justice through its authorized officer. In performing this function, the authorized officer can:

(a) Inspect the premises in which prisoners stay;

(b) Talk to prisoners;

(c) Examine general and separate evidence, files and other documentation relating to prisoners;

(d) Establish necessary facts and evidence regarding complaints of prisoners.

517. These inspections can be performed regularly, by monthly and weekly visits, but also in accordance with need and if convicted persons request them (for example after conversation, checking of statement from the request).

Article 12

518. Impartial investigations are conducted by the investigating judge, who acts based upon regulations of the Law on Criminal Proceedings according to the request of the competent prosecutor. Detailed data are given in the section pertaining to article 2.

Article 13

519. Regarding the right to complaint, likewise the right to estimation or examining of someone's complaint, the situation in the Ministry of the Interior is favourable. In fact, each request or complaint submitted to the Ministry is examined and disciplinary measures are taken against those officers who exceed their authority. Police are obliged to provide citizens with physical protection, especially in cases when it is obvious that the persons who submitted complaints are subject to threats of violence.

520. At the Ministry there are established "hotlines" and phone numbers, regularly published in the daily press in such a way that each citizen can call these numbers and lodge a complaint regarding the abuse of an official post by an officer.

521. In the period from 1 January 2000 to 31 December 2003, the Ministry received 511 requests/complaints from citizens regarding the conduct of officers of the Ministry, out of which 389 complaints were deemed as unfounded and 112 were deemed founded, and appropriate legal measures have been undertaken against those officers.

522. The possibility of bringing criminal charges, inter alia, exists for persons who consider that torture has been used against them or some other treatment sanctioned by the criminal offences mentioned in the section on article 2 of the Convention. According to these criminal offences, the State prosecutor undertakes a criminal prosecution ex officio.

Complaints of convicted persons – the informing of rights

523. Regarding measures which enable the protection of the person who lodged a complaint to witness protection, there is, at the moment, only general protection within protection provided to citizens by the Ministry of the Interior (police). The compilation of a working version of the proposed Law on Witness Protection according to the Agenda of the Government of the Republic of Montenegro for the actual year 2004, has been completed. Next will come public discussion, analysis, the compiling of a final proposal and the delivery of the proposal to the Parliament of the Republic of Montenegro.

Article 14

524. According to the Code on Obligations (*Official Gazette of the SFRY*, No. 29/78; 39/85; 57/89 and *Official Gazette of the FRY*, No. 31/93, article 188, official persons are obligated to compensate for damage in the form of remuneration in the case of death, injury or damage to health. The victim of the damage is entitled to compensation for simple damage and likewise to compensation for lost benefits. In addition, according to article 193 of the Code on Obligations, the person who causes damage is also obliged to compensate the costs of hospital treatment and lost earnings because of the labour unfitness. If the injured person, due to bodily injury or severely disturbed health, is put in the situation of complete or partial unfitness for work and thus loses earnings or his/her needs are permanently increased or possibilities for his further advancing are destroyed or reduced, the responsible person is obliged to pay the injured party the funds equivalent to the damage caused.

525. In the case of death, the person who caused the damage is also obliged to compensate for the funeral costs. The right for compensation is also entitled to persons supported by the person who died, according to article 194 of the Code on Obligations.

526. In addition to material damage, the same Law also prescribes financial compensation of non-material damage (arts. 199–205). This compensation can be related to: physical pains suffered; mental pains, because of reduced life activities, ugliness, injury of reputation, honour, freedom and rights of the person; and likewise because of increased fear. Compensation is ordered by the court if it finds that the circumstances of the case, and taking into account especially the intensity of pain and fear and their duration, justify it. The compensation of non-material damage is ordered independently from compensation for material damage and even in the case of its absence. Compensation for non-material damage also entails fair compensation to the members of the immediate family (spouse, children and parents) in the case of the death of some persons. This compensation can be ordered to brothers and sisters if they and the deceased existed as a permanent life-unit. In the case of serious disability, a court may also order fair financial compensation to the

victim's spouse, children and parents for their mental pain, and also to an illegitimate spouse, if the deceased and he/she existed as a permanent life-unit.

527. In court proceedings, these rights can be achieved in a lawsuit based upon the regulations of the Law on Contentious Procedure.

Article 15

528. Comments on this article of the Convention are given with article 2, including the section regarding articles 12 and 98 of the Law on Criminal Proceedings.

Article 16

529. By signing of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Republic of Montenegro obliged itself to prohibit all acts which represent cruel, inhuman and degrading treatment or punishment but do not represent the acts of torture according to article 1 of the Convention, in the case when such offences are committed by officials or persons who act ex officio, or with explicit and tacit inducement or agreement of these persons.

530. In fact, regarding the request, which 63 Roma persons, citizens of FRY, the Republic of Montenegro, submitted to the Committee against Torture, because of violation of regulations of the Convention, more exactly, the incident which occurred on 15 April 1995 in Danilovgrad, the Committee, at its session of 21 November 2003, made the decision that the Republic of Montenegro had violated articles of the Convention (arts. 12, 13 and 16, para. 1) and obliged the Republic of Montenegro to perform an investigation, to prosecute the responsible persons and to provide fair compensation to persons who had suffered a loss.

531. In accordance with the decision of the Committee, the Government of the Republic of Montenegro informed the Committee about actions undertaken regarding the positions and recommendations mentioned in the decision (19 March 2003). The Government concluded that the event in Danilovgrad was without political background, owing to the fact that similar events had not been recorded in Montenegro, and that the event was partly a consequence of the living conditions, and political and security situation, that existed at the time in Montenegro, owing to the war environment and high level of political polarization. The event happened as a spontaneous revolt and reaction to the act of rape of the Montenegrin little girl by two non-adult Romas.

532. By considering possibilities for a new set of proceedings, in accordance with the conclusions of the Committee, the Government of the Republic of Montenegro concluded that:

- Proceedings of checking evidence and estimating liability for the actions of authorized police officers cannot be performed in an appropriate way to establish if all measures were undertaken, first of all because of the lack of time and the impossibility of realizing all events, taking into account also the large number of citizens. Thus, it is not possible to start proceedings for eventually committed omissions, taking into consideration that for establishing of criminal offences – abuse of official posts and unscrupulous work in service due to the prescription of legal action;
- However, there are legal possibilities according to valid regulations and principal positions of the Superior Court of Montenegro, that it was qualified form – severe offence against general security, for starting new proceedings, because relative

prescription of legal action did not come forth. The condition for this is to provide new evidence, which according to available data is not possible because of the lack of time and the impossibility of providing new evidence, which is the condition that an authorized prosecutor requests for a rehearing.

533. Aiming at the implementation of recommendations of the Committee, the Government concluded that those who suffered a loss (representatives of Roma) were entitled to an extrajudicial settlement, based upon which, about 1 million Euros (985,474) were paid to them (for material and non-material loss).

534. The Government of the Republic of Montenegro also proposed to the Public Communal Company from Danilovgrad that it consider the possibility of returning workers to work before the ending of court proceedings (labour dispute), which is in progress.

Annex

Report of the Coordination Centre of Serbia and Montenegro and of the Republic of Serbia for Kosovo and Metohija

Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment

Unfortunately, the realities in Kosovo and Metohija perfectly fit into the definition of the term "torture" as contained in article 1 of the Convention, according to which torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person with the purpose of obtaining from him or a third person information or a confession, punishing him for an act he/she or a third person has committed or is suspected of having committed or intimidating or bringing pressure to bear on him/her or a third person or for any other reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or another person acting in an official capacity.

Serious violations of human rights were committed in Kosovo and Metohija during 1998, when, parallel with the escalating terrorist attacks by the so-called KLA/UCK against the security forces of the Republic of Serbia and the FRY in which many people were killed or wounded, there were first reported cases of disappearances and kidnappings of civilians, members of the MUP RS and soldiers of the Army of the FRY, as well as of the demolition of property, religious sites and cultural heritage.

The undocumented, excessive violation of the human rights of the ethnic Albanian population was allegedly the pretext for the "humanitarian" intervention by NATO forces. After the NATO bombing campaign, another perfidious and criminal campaign was mounted in the presence of international forces, that of expulsions, killings and kidnappings of non-Albanians, and demolition or destruction of Serbian Orthodox churches and monasteries.

In the context of the definition of torture, it should be recalled that the most vicious forms of inhuman treatment of Serbs and other non-Albanians and acts against their property occurred in the first months of the establishment of an international protectorate in Kosovo and Metohija. However, more than four years on, such human rights standards as the right to life, freedom of movement, sustainable return, right to employment, right to health care and other rights that are seemingly easily achievable, have not yet been put in place.

The most glaring example of evidence, presented in a court of law, was the case of the so-called Lap Group or the trial of the four co-accused, formerly belonging to the KLA/UCK, Mustafa Rustemi, Ltif Gashi, Naim Kadri and Nazif Mehmeti, who were collectively sentenced by the Trial Chamber of the District Court of Pristina to a total of 45 years in prison for having committed war crimes against the civilian population during 1998 and 1999. The victims were ethnic Albanians who did not openly support the goals of the KLA/UCK, which was the reason why they were branded as Serbian regime collaborators by this paramilitary organization, and one Serb, Milovan Stankovic, who miraculously survived 56 days of torture and incarceration as a result of which he lost 48 kilos of body weight. He and other civilians were held in appalling detention conditions, were denied food and water for days and had to endure daily physical and mental mistreatment by their captors. Apart from the physical harm that Stankovic suffered, he was also inflicted severe mental pain, as confirmed in his medical report.

At the opening of the trial, the international prosecutor included in his indictment only crimes that the four had committed individually or under command responsibility against ethnic Albanians. However, pressured by the facts and the weight of the compelling evidence that Stankovic had been subjected to torture, charges were widened to include his case as well. Legal representatives who attended this trial on behalf of the victims said after the trial was adjourned that in a courtroom packed with ethnic Albanians, they gained the impression that, though the co-accused were primarily convicted of the crimes against their fellow Albanians, the audience thought that their conviction was to be blamed on Stankovic, the lawyers, the Government of the Republic of Serbia and the MUP RS, who staged this show trial. Fortunately, thanks to tight security measures at the trial, the lawyers left unscathed.

Another case of torture was recently reported in a Belgrade daily newspaper that published pictures of three KLA/UCK members holding two beheaded Serb heads. The investigation carried out into this incident established the identity of the persons in the picture but not as yet the identity of the victims, except that they were of Serbian nationality. The three Albanians from the picture are from the Decane area and one of them is now with the Kosovo Protection Corps (KPC) established in 1999, when the KLA/UCK was disbanded. The face of a KLA/UCK soldier in the picture beams with happiness that two more Serbs had been killed. These pictures have provoked the strong reaction of the public and prompted an investigation of the case, which is expected to result in the arrest of those responsible very soon. This case has caused fear among the families of missing and abducted persons in Kosovo and Metohija, who have not lost hope that their loved ones are still alive.